

DRUGS IN SPORTS: COMPROMISING THE HEALTH OF ATHLETES AND UNDERMINING THE INTEG- RITY OF COMPETITION

HEARING BEFORE THE SUBCOMMITTEE ON COMMERCE, TRADE, AND CONSUMER PROTECTION OF THE COMMITTEE ON ENERGY AND COMMERCE HOUSE OF REPRESENTATIVES ONE HUNDRED TENTH CONGRESS SECOND SESSION

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CONTENTS

	Page
Hon. Bobby L. Rush, a Representative in Congress from the State of Illinois, opening statement	1
Hon. Ed Whitfield, a Representative in Congress from the Commonwealth of Kentucky, opening statement	3
Hon. Jan Schakowsky, a Representative in Congress from the State of Illinois, opening statement	4
Hon. Cliff Stearns, a Representative in Congress from the State of Florida, opening statement	6
Hon. Edward J. Markey, a Representative in Congress from the State of Massachusetts, opening statement	7
Hon. Marsha Blackburn, a Representative in Congress from the State of Tennessee, opening statement	8
Hon. Anthony D. Weiner, a Representative in Congress from the State of New York, opening statement	10
Hon. Lee Terry, a Representative in Congress from the State of Nebraska, opening statement	11
Hon. Michael C. Burgess, a Representative in Congress from the State of Texas, opening statement	12
Hon. Joseph R. Pitts, a Representative in Congress from the Commonwealth of Pennsylvania, opening statement	13
Hon. John D. Dingell, a Representative in Congress from the State of Michigan, prepared statement	180

WITNESSES

Hon. George J. Mitchell, a United States Senator from the State of Maine, prepared statement	14
Allan H. "Bud" Selig, commissioner, The Office of the Commissioner of Baseball	18
Prepared statement	20
Donald Fehr, executive director, Major League Baseball Players Association ..	21
Prepared statement	24
David Stern, commissioner, National Basketball Association	37
Prepared statement	37
G. William Hunter, executive director, National Basketball Players Association	40
Prepared statement	42
Roger Goodell, commissioner, National Football League	44
Prepared statement	48
Gene Upshaw, executive director, National Football League Players Association	46
Prepared statement	48
Gary Bettman, commissioner, National Hockey League	90
Prepared statement	92
Paul Kelly, executive director, National Hockey League Players Association ..	98
Prepared statement	100
Jim Scherr, chief executive officer, U.S. Olympic Committee, Colorado Springs, Colorado	145
Prepared statement	148
Travis T. Tygart, chief executive officer, U.S. Anti-Doping Agency, Colorado Springs, Colorado	149
Prepared statement	151
Myles Brand, president, National Collegiate Athletics Association, Indianapolis, Indiana	154
Prepared statement	156

VI

	Page
Robert Kanaby, executive director, National Federation of State High School Associations, Indianapolis, Indiana	161
Prepared statement	163
Alexander M. Waldrop, chief executive officer, National Thoroughbred Racing Association, Lexington, Kentucky	165
Prepared statement	167

SUBMITTED MATERIAL

National Football League Policy on Anabolic Steroids and Related Substances 2007, June 21, 2007	62
E-mails from horse racing owners and breeders, submitted by Mr. Whitfield ...	108

DRUGS IN SPORTS: COMPROMISING THE HEALTH OF ATHLETES AND UNDERMINING THE INTEGRITY OF COMPETITION

WEDNESDAY, FEBRUARY 27, 2008

HOUSE OF REPRESENTATIVES,
SUBCOMMITTEE ON COMMERCE, TRADE,
AND CONSUMER PROTECTION,
COMMITTEE ON ENERGY AND COMMERCE,
Washington, DC.

The subcommittee met, pursuant to call, at 9:40 a.m., in room 2123, Rayburn House Office Building, Hon. Bobby L. Rush [chairman of the subcommittee] presiding.

Present: Representatives Rush, Schakowsky, Barrow, Markey, Towns, Weiner, Matheson, Whitfield, Stearns, Pickering, Fossella, Pitts, Terry, Burgess, Blackburn, and Barton (ex officio).

Staff Present: Christian Fjeld, Consuela Washington, Valerie Baron, Brian McCullough, Shannon Weinberg, William Carty, and Chad Grant.

OPENING STATEMENT OF HON. BOBBY L. RUSH, A REPRESENTATIVE IN CONGRESS FROM THE STATE OF ILLINOIS

Mr. RUSH. This subcommittee will come to order. In the 109th Congress this subcommittee led the congressional efforts to produce legislation cracking down on the illegal use of steroids and other drugs in sports. Then subcommittee Chairman Stearns introduced H.R. 3084, the Drug Free Sports Act of 2005. And with his competent leadership we have reported the bill out of subcommittee, then out of full committee to the floor of the House of Representatives. Subsequent to those committee efforts, no further action was taken as the professional sports leagues made progress towards implementing and enforcing new testing policies for their athletes.

The purpose of today's hearing is to restart and perhaps finish the legislative process that we started in the 109th Congress. The use of performance-enhancing drugs in sports is not a trivial matter. This is a serious public health problem that is worthy of congressional scrutiny. The detrimental side effects of steroid use are well documented and their effects on young people are particularly pernicious. Steroid use has been linked to impotence, clotting disorders, liver damage, heart attacks, strokes and violent mood swings known as roid rage. HGH, the human growth hormone, which is increasingly replacing steroids as a drug of choice among athletes has been documented to have equally negative side effects, including swelling, diabetes, hardened arteries, high blood pressure

and abnormal growth of bones and organs. Some medical experts assert that HGH increases the risk of cancer.

So given the severity of the problem, I fully intend to have our hearing be deliberative and perspective. While it is important to hold people accountable for past actions, I for one am not interested in rehashing the past. The purpose of this hearing is to deliberate on a number of public policy issues that are either new or unresolved from our deliberations in the 109th Congress.

First, I am interested in the recommendations of the Mitchell Report and how the sports leagues will or will not implement those recommendations and the provisions of the World Anti-Doping Agency Code, or the WADA Code.

Second, I want to address the increasing prevalence of marketing and use of HGH. The fact that professional and most amateur sports associations do not or cannot test for HGH is a major hole in the current system.

Third, I want this hearing to explore the idea of saving player samples and retroactively testing them when new drugs are discovered. The designer steroid THG was only discovered as a result of the BALCO Federal investigation and those athletes that tested positive for the drug were implemented by old samples that were stored at laboratories and retested.

Eradicating sports performance-enhancing drugs at the highest level of competition is not just a matter of preserving the integrity of the competition. It is about sending a clear resounding message to young people that these dangerous drugs are not attributed to success and achievement. We have to get it into our kids's heads that taking steroids and other drugs will lead you nowhere but pain and ill health and certainly not well-earned wealth. It is vital that we treat steroid use and abuse as an urgent matter and then eradicate it not only from the locker rooms of millionaire athletes but from the lockers rooms filled with young impressionable students. Whether HGH use among NFL or college football players exists, whether it is amphetamines use among baseball players, THG's prevalence with Olympic athletes or whether it is illegal painkillers injected to Third World resources, these performance-enhancing drugs are a deliberate attempt to cheat and to spoil honest competition with devastating long-term effects on athletes.

If Congress can play a vital role in shaping public policy to eradicate all sports and every level of these substances, then the subcommittee is prepared to act. Let me just say, I do resent the elitists, the cynics and the culture critics who dismiss this issue as a populous spectacle. I believe that we can move forward in a measured, deliberative and bipartisan manner with legislation that seriously tackles drugs in sports. And as chairman, that is precisely how I intend to conduct the business of this subcommittee on this particular matter.

With that, I yield back the balance of my time. I now recognize the ranking member of the subcommittee, Mr. Whitfield, for 5 minutes.

OPENING STATEMENT OF HON. ED WHITFIELD, A REPRESENTATIVE IN CONGRESS FROM THE COMMONWEALTH OF KENTUCKY

Mr. WHITFIELD. Chairman Rush, I want to thank you very much for having this hearing. I want to thank Cliff Stearns and the both of you for the leadership that you have provided on this important issue that is of great interest to people throughout America. And I can assure you that our side of the aisle looks forward to working with you to proceed in a nonpartisan manner to improve the integrity of all sports.

I might say that I believe that football, baseball, basketball, and other sports have been quite effective in addressing this issue and showing their sincerity and trying to deal with it. But this morning briefly I want to shine the spotlight on another sport that has not been as successful in addressing this serious issue, and that is the horse racing industry.

Last month in an interview, Hall of Fame horseman and trainer Jack Vanberg, who has won more races than any living trainer, said he had seen enough. He said drugs ranging from medications like steroids and clenbuterol to prohibited substances like EPO are slowly destroying horse racing in America. Trainers and vets make the decisions and the horse cannot say no. England, France, all of Europe, Japan, South Africa, Dubai, Australia, all the major racing jurisdictions have banned the use of drugs still commonplace in America. England, for example, banned steroids in racing over 30 years ago. And throughout the world the U.S. is viewed as a place where racing is about drugs. As many people in the industry say, it is no longer my horse is better than yours. It is my vet is better than yours.

In 1981, U.S. Senator Matt Mathias of Maryland gave a speech to the Jockey Club Roundtable in Saratoga, New York, to speak about legislation entitled the Corrupt Practices in Horse Racing Act. That bill had been introduced by Senator Pryor of Arkansas and others and it would have banned all drugs, including Bute and lacix, putting the U.S. in line with other major racing jurisdictions around the world but, more important, establishing for the first time a clear and uniform rule for the United States. It also would have prohibited numbing, nerving, and freezing of all horses prior to racing. If the horse is not healthy to run, if the horse is not healthy enough to run, then it shouldn't be running.

State racing commissioners descended on Senator Mathias' office after that speech, and they assured him 21 years ago that they were going to address the problem, that they were going to crack down on the use of these drugs in racing. Here we are 27 years later and not much has changed. Many racing jurisdictions have adopted some version of the model rule. But although the racing commission in Louisiana, after adopting this rule just last month, 2 months ago, yesterday the Senate in Louisiana reversed that decision. So some 27 years later there is not a uniform national drug policy rule for horse racing in America.

Now, through the years the horsemen's groups who claimed that they represent every trainer and every horse owner have been in the forefront to stop the adoption of more stringent drug rules, and they have been and continue to be successful to the detriment of

the sport. Recently the Racing Medication and Testing Consortium recommended that four steroids be classified as Class III drugs, which in effect would ban steroids from racing in the U.S.

Now Dr. Steven Barker, state chemist for the Louisiana Racing Commission and an ally of the Horsemen's Benevolent and Protective Association, said the group that put this together should be taken out and beaten.

Now steroids have been banned in all professional sports except horse racing for a reason. They are dangerous, and they contribute to clotting disorders, liver damage, heart attacks, strokes and weakened tendons. In horse racing they also contribute to breakdowns on the tracks, endangering the lives of jockeys, exercise riders, as well as horses. The industry does not provide transparency about accidents and fatalities on the track. But from the bits and pieces of information that have become available, it is estimated that between 2,500 and 3,000 horses die on the track each year in America.

Now as D.G. VanClief said, who is the former CEO of the National Thoroughbred Racing Authority, we have endeavored to adopt uniform rules governing the use of medication for years without success despite the clear need to do so. So I would ask this morning as we have this hearing the rhetorical question that Senator Mathias asked 27 years ago. Is it time to call the Federal cavalry and send it chasing into your stables with guns blazing to clean up the sport of horse racing?

Thank you, Mr. Chairman.

Mr. RUSH. The Chair now recognizes the vice chairman of the full subcommittee, my friend from the great State of Illinois, Ms. Schakowsky, for 5 minutes.

OPENING STATEMENT OF HON. JAN SCHAKOWSKY, A REPRESENTATIVE IN CONGRESS FROM THE STATE OF ILLINOIS

Ms. SCHAKOWSKY. Thank you, Mr. Chairman. Frankly, I wish we didn't have to hold this hearing at all, but after years of stories of professional athletes testing positive for performance-enhancing drugs, I am afraid that this committee and this Congress is left with little choice. Professional athletes should be positive role models who demonstrate the importance of fitness, of teamwork and of striving to be the best you can. However, I am deeply concerned that for kids across America they are instead examples of unfettered ambition and they are conveying the message that it is okay to cheat to get ahead at any price. And I am afraid that this is the message that is reaching our children.

Performance-enhancing drugs are being used by more and more high school students across the country. I have heard about junior high students as well. Studies show that more than 1 million children in the United States have used steroids at least once in their lifetime. The CDC estimates that between 3 and 6 percent of high school athletes, hundreds of thousands of young athletes, currently use some kind of steroid. The risk to teenagers of using these substances are well-documented. The side effects of these substances to adults are serious, but because of the hormonal changes that they are going through children can experience additional side ef-

fects which can have harmful, permanent physical and emotional damage to their development.

On January 14, Illinois enacted a random drug testing program for students participating in State finals competitions, joining New Jersey and Texas and Florida to become the fourth State to test for performance-enhancing drugs used by high school athletes. Unfortunately, studies have shown that random drug testing programs don't seem to serve as a deterrent. That is how powerful and alluring these drugs are for young athletes. But I am hopeful that my home State has more success in combating the proliferation of these substances than other programs have had in the past.

Still I am concerned that this trend is going to be very difficult to combat. The sad truth is that performance-enhancing drugs are all too easy to obtain. Type steroids into Google or Yahoo! shopping and you will find almost 20,000 sites where you can easily obtain them. Type in HGH, human growth hormone, and you can find almost 10,000 sites. Some of these pills sell for as low as \$5 a bottle, a price that an average teenager can easily afford. Here is the name of some of these Web sites, houseofmuscle.com, legalsteroids.com, let's see, [roid—www.roidstore.com](http://roid-www.roidstore.com).

It is becoming more and more clear to me that Congress needs to once again consider legislation to address this issue, legislation that will eliminate the use of these substances in professional sports that will make clear that HGH is banned, hazardous, and that will crack down on the proliferation of these drugs on the Internet.

In the Congress I was proud to work with Congressman Stearns last session to craft the Drug Free Sports Act, legislation that required professional sports associations to conduct random testing of athletes for the use of performance-enhancing substances. It required testing five times each year at random intervals during both the season of play and the off-season and without advanced notification. The penalty for a positive test result is suspension without pay for one-half of the season for the first violation, for one full season for the second violation and permanently for the third violation. I am curious to hear why this commonsense approach to finally ridding drugs from professional sports in a uniform transparent manner wouldn't work.

Barry Bonds, Roger Clemens, Derek Jeter, these are idols to millions of kids across the country who collect their baseball cards and wear their jerseys. These athletes should be national treasures. I simply don't know what I am supposed to say to my grandkids when the stories break of yet another athlete caught cheating. I would be very interested to hear from our witnesses here today what they say to their children and grandchildren.

Thank you again, Mr. Chairman. I welcome and look forward to hearing from our witnesses today, and yield back the balance of my time.

Mr. RUSH. The Chair wants to thank the gentlelady. The Chair now recognizes the former chairman of the subcommittee, the author of the H.R. 3084, the Drug Free Sports Act of 2005. The Chair recognizes Congressman Stearns of Florida for 5 minutes of opening statements.

OPENING STATEMENT OF HON. CLIFF STEARNS, A REPRESENTATIVE IN CONGRESS FROM THE STATE OF FLORIDA

Mr. STEARNS. Good morning and thank you, Mr. Chairman, for holding this hearing. This now is the third hearing on steroids by this committee. I also want to congratulate my colleague from Kentucky, Mr. Whitfield, for his new position as the ranking member and hopefully some day soon he will be the chairman. My colleagues, in March of 2005 as chairman of this Committee, along with my distinguished colleague Jan Schakowsky, we held hearings to investigate steroid use in professional baseball and I believe that those hearings have directly led to the creation of a steroid testing policy, particularly with emphasis in Major League Baseball and to the Mitchell investigation. I believe Commissioner Selig took action as a result of these hearings. And when pressed, he had Senator Mitchell investigate.

Mr. Chairman, he is to be commended for this investigation and appointing Senator Mitchell to do this. But, my colleagues, the Mitchell Report is a report card on how he and the Players Union Association handled the steroid epidemic in Major League Baseball over the past 16 years. In short, they failed. And I am already on record calling for the resignation of Commissioner Selig. However, I respect the owner's decision to renew his contract and there is good news that progress has been made, and I hope this progress will warrant a passing grade in the future. As the results of the committee's action, Major League Baseball has recognized they have a problem with widespread steroid use and have recently instituted a steroid testing policy. Yet the testimony of James Scherr, the Chief Executive Officer of the United States Anti-Doping Agency states that the U.S. ADA's stringent testing system is viewed as the world leader in Olympics anti-doping and is universally acknowledged as one of the most rigorous anti-doping programs in the world. Question, shouldn't professional sports be using this system in its entirety? It has a proven record. While each professional sport now maintains their own steroid testing policy, are there any reasons why each of our country's professional sports associations could not adopt the world-class standards created by the United States Olympic Committee?

In 2005, as I mentioned, I introduced the Drug Free Sports Act, a bill that would direct the Secretary of Commerce to require professional sports associations to adopt and enforce strict steroid testing policies. What I would like to see done, Mr. Chairman, is for all professional sports associations to come together voluntarily and develop a consistent, transparent and independent anti-doping policy like the USADA. I would even like to see professional wrestling added into that coalition. If the sports associations are not inclined to adopt these standards, we in Congress may need to create a Federal standard to compel their compliance. At this time obviously I would rather not have the Federal legislation developed, or it be mandated to involve the Federal government in testing professional athletes. However, Mr. Chairman, I strongly believe that Congress and this committee should continue to monitor professional sports to ensure that the willful neglect that occurred in the past does not occur again.

So I call today for all professional sports to come together, all of your associations, to develop a plan like the anti-doping agency, like the plan that has been developed for the Olympics so that the Congress does not have to act. The integrity of professional sports, their athletes and our young people who want to grab that brass ring on the merry-go-round of glory deserve no less.

Thank you, Mr. Chairman.

Mr. RUSH. The Chair thanks the gentleman from Florida. And I want to just add, I don't agree with your ambitions. I think you have been—I have tried to be very gracious towards you and then you want me to lose my job. So I have to let you know I don't agree with that.

The Chair now recognizes the gentleman from Massachusetts, Mr. Markey, for 5 minutes of opening statements.

OPENING STATEMENT OF HON. EDWARD J. MARKEY, A REPRESENTATIVE IN CONGRESS FROM THE STATE OF MASSACHUSETTS

Mr. MARKEY. Thank you, Mr. Chairman, very much. I want to thank you for holding this very important hearing. Today we have a white hot spotlight shining on the issue of drug use in sports. Whether we are talking blood, doping, anabolic steroid use, human growth hormone, ephedra, amphetamines, enabling or tolerating drug use in sports undermines the positive and productive goals that are part of athletic competition. It also endangers the health of the young aspiring athletes of this country and the world.

The news is spread across the sports pages, Olympic Track and Field stars, Tour de France champions, NFL middle linebackers and Major League pitchers, it really doesn't matter. We are inundated with the success stories of professional and amateur athletes who tarnish the good name of competition through the use of performance-enhancing drugs.

However, what is it that is of most concern to me is the example that superstar athletes are setting for the next generation of young people in high schools and junior high schools across the country. We are now seeing what I believe is only the proverbial tip of the iceberg with regards to performance-enhancing drug use in high school populations. In 2005, of 10,000 adolescents, 4.7 percent of the males and 1.6 percent of females age 12 to 18 admitted to using anabolic steroids, DHEA, HGH or a host of other performance-enhancing drugs at least once a week. I want to emphasize that point. We are not talking about trying a drug once and then stopping. We are talking about repeated, regular use. We are also talking about those who admitted to drug use. You can bet that the actual percentage for use of banned substances are close to if not greater than 10 percent. Whatever the real percentage is, the fact remains that we are seeing unprecedented numbers of high school and junior high school athletes who are choosing to use roids, gear, juice, sauce, vitamins, whatever you want to call it, all for the sake of an edge in competition.

There are some who ask, why is Congress having a hearing on this issue in the first place? To those statements I reply the price that will be ultimately paid for the widespread use of performance-enhancing drugs is high. Time will only tell how high. We know the

issue of HGH can cause diabetes, joint pain, and other problems. In the adolescent population, HGH use while bones are still growing can actually result in abnormally accelerated bone growth known as gigantism. Steroid use can cause more serious problems, including liver and kidney damage, in addition to heart attacks. And this is only the short-term damage. We are merely guessing if we suggest we know what long-term harms will result from steroid and HGH use.

Over the past years, it has appeared that some Major League Baseball players believed that HGH stands for helps generate homeruns, when it really stands for health gets harmed. And sadly at some point in the not too distant future today's stars, both amateur and professional, may deeply regret the price they paid in terms of their own health for their ill-gained athletic success. The potential health crisis and possible lifetime damage to players is truly tragic, but especially dangerous because it sets a bad example for junior high school and high school athletes.

The first step in dealing with this problem is addressing our own apparent ambivalence to this as fans, as coaches and as a society. We cannot continue to stand by and watch Major League and players associations talk from both sides of their mouths publicly condemning the use of performance-enhancing drugs while turning a blind eye to their use in club and fieldhouses across the country. That is why I hope at the end of this important discussion we have laid the groundwork for more stringent and rigorous testing standards for all athletes, professional and amateur alike.

I would like to congratulate the actions that have been taken by the leagues thus far. It is a big step over what has existed in the past. But I think this hearing can play a very constructive role, Mr. Chairman, in helping to ensure that we have some sense of uniformity which is put in place that young people can depend upon as the message that is coming from their heroes in the sports world.

I thank you for taking me out of turn at this time.

Mr. RUSH. The Chair thanks my friend from Massachusetts. And the Chair now recognizes the gentlelady from Tennessee, Mrs. Blackburn, for 5 minutes.

OPENING STATEMENT OF HON. MARSHA BLACKBURN, A REPRESENTATIVE IN CONGRESS FROM THE STATE OF TENNESSEE

Mrs. BLACKBURN. Thank you, Mr. Chairman. I do feel like we are picking up on an important conversation that we started a couple of years ago, as you have heard from other members. And I appreciate, Mr. Chairman, that you have called the hearing and that you are giving the attention to the Mitchell Report that it has certainly generated and we see it deserves our attention. And the significant health and competitive issues that it raised in the public consciousness with respect to professional sports necessitate our attention to the issue.

However, I will tell you I wish that we were on the floor of the House right now, working on renewing and extending the Protect America Act and making certain that our intelligence community

has the ability they need to keep our country safe. Sometimes I think we get our priorities out of order.

Fortunately, much has changed since our subcommittee first met on this issue in 2005. Major League Baseball now has a respectable and mandatory drug testing policy in place and the world of pro sports is on notice. The notice sent is the American people will no longer accept a see no evil, hear no evil and speak no evil attitude towards drugs in sports. Yet as the Mitchell Report reveals, all is far from well. Professional athletes continue to seek out performance-enhancing drugs, be they anabolic steroids or human growth hormone, and many questions raised by the Mitchell Report are still unanswered, primarily several recommendations from the Mitchell Report have yet to be implemented by Major League Baseball.

This does not mean that Major League Baseball has failed to act. In fact, Commissioner Selig and his team at MLB are to be commended for acting quickly to adopt all provisions from the Mitchell Report that could be unilaterally adopted. What we don't know, however, is how quickly the league will be able to implement the remaining recommendations which will require direct negotiations with the players association. It is my hope that the two sides will move expeditiously to reopen negotiations and work out an agreement. After all we know the current collective bargaining agreement negotiated in 2006 is in effect until 2011. Yet it is in both sides' interest to go back to the table, reopen negotiations and work to implement the remaining recommendations of the report.

And I am quite interested to hear from both sides on this matter today. After all, the matter at hand reaches far beyond the playing field of pro sports. We are even more concerned, as you have heard from other colleagues this morning, about the effect this has on our student athletes at the college and high school level. Seven million student athletes are going to be on the field, the mat, the court, the track in 2008. Between 2 and 6 percent of these young people will take steroids. The debate is about how they, how they are going to perceive your attitudes toward performance-enhancing drugs and how you, each of you at the panel today, react may determine the future of the issue.

And my question is, how do you square this with your children and grandchildren and the message that you are sending to them, the message that you are giving by your lack of initiative in taking this issue into your own hands and addressing this issue. I would love to hear from you on that. What do you say to your own children about how you act about this issue? If the professional sporting world, including but not limited to the representatives that are before us today, remain committed to permanently eradicating anabolic steroids, HGH and whatever comes next, we could possibly win this battle. We are not going to do it if we continue to have hesitation, if we don't see a willingness. We know we can't do it all alone.

We look forward to hearing from you. We thank you for the strides that you have made. We look forward to your doing a better job. And we thank you for the time of being here with us today, and I yield back the balance of my time.

Mr. RUSH. The Chair thanks the gentlelady. The Chair now recognizes for 5 minutes of opening statements the gentleman from New York, Mr. Weiner.

OPENING STATEMENT OF HON. ANTHONY D. WEINER, A REPRESENTATIVE IN CONGRESS FROM THE STATE OF NEW YORK

Mr. WEINER. Thank you, Mr. Chairman. There almost should be stipulated that this issue has impacted the integrity of your product and that the value of the product has been sullied and that the athletes that are involved in it have been impacted by implication, in many cases by participation in what was I guess cheating. But I think that I speak for many Members of Congress and frankly many Americans in wondering whether this is the forum that we should be solving these problems in. You know we in Congress frequently are interested in getting information about issues of the day. But the matrix between legislative activity and what you all do is tenuous at best.

I know that it has been argued that in various levels baseball has an antitrust exemption to some degree, all of you operate as kind of national trusts. We are interested in the integrity of the game, we are interested in young athletes, as my colleague has mentioned. But I think at the end of the day what is really going to impact the change in behavior on the part of the people who sit before this panel is that your business is going to be impacted, that fans are going to express an unwillingness to buy into the idea that competition is fair, they are going to cease to enter into this relationship, this one that we have with athletes where we kind of admire and idolize them and seek to emulate them and that, at the end of the day, is going to impact the bottom line of what are basically very successful businesses. I think ultimately it is the marketplace that is going to say, you guys have to work out something that makes this—make the sports back to what they were or you risk tipping into that area of entertainment where it becomes professional wrestling that everyone kind of agrees that it is not on the up and up. Everyone filters the results through that lense and at the end of the day your product will cease to have the same value.

This is something that I think that everyone realizes is in the interest of the athletes to get sorted out and in the interests of ownership to get sorted out. We in Congress obviously are interested in it. We are fans, we are legislators. But at the end of the day I don't believe that this—that ultimately this is going to be resolved by Members of Congress or by the legislature. We have important issues. And I am not saying that we shouldn't have hearings like this. But it does beg the question of whether or not the real outcome of this should be resolved by fans who start to vote with their feet and start to say you know, I don't like athletes who do this, I am not going to buy jerseys with their number on them. Or I am not going to support teams that don't really crack down or I am going to start looking for other sports where maybe I can find more nourishing entertainment or I am going to go start watching college sports and the like. I think ultimately that is what is going to wind up happening because that is the erosion

that is taking place in the public consciousness. By no means is the worst thing that happens to these leagues that there are photographs of the commissioners taking an oath in front of Congress. The worst thing that is happening to these leagues is that fans are simply losing their faith that everything is on the up and up.

So I think that we are perhaps providing an informative light on these issues. But frankly, there is no absence of that light coming from the media, there is no absence of reflection going on within these leagues, and perhaps that is the best place the best forum for these things to be continued in the future.

I yield back the balance of my time.

Mr. RUSH. The Chair now recognizes the gentleman from Nebraska, Mr. Terry, for 5 minutes.

OPENING STATEMENT OF HON. LEE TERRY, A REPRESENTATIVE IN CONGRESS FROM THE STATE OF NEBRASKA

Mr. TERRY. Thank you, Mr. Chairman. Thank you for holding this hearing and especially I appreciate the gentleman sitting in front of us, this first panel. Your time is important to us. So we appreciate that you took the time to be here.

Listening to sports talk, I think there is two major issues here. According to people who call into sports talk radio shows, they are the sports purists, they are upset about steroids and human growth hormones in the sense that they are cheaters. There are people who are skewing the system to themselves and the selfishness of it, and that perhaps those cheaters should not be allowed into the record books and such. And I think that debate is perfectly fine in that realm of sports talk radio or perhaps even in your own boardrooms.

But the reason why we are here today and we have invited you is because there is other implications to society as a whole. There is health issues at stake here, as most of my colleagues have discussed. And that is that the steroids, human growth hormones, whatever is being used at the professional level to gain that advantage trickles down, it trickles into college, it trickles into high school. And we are worried about how widespread this may be. And we have heard various statistics in opening statements today. And while the statistics may be slightly different, what we know is real is that it exists in the high school level. And I think there is two thought processes of why it trickles down. One is just as the gentleman from Massachusetts said, it is just a hero worship. If my favorite player can do this, I would like to be like my favorite player. I am going to use them, too. The other part of it is the competition. And this was brought out by a gentleman from my hometown of Omaha who was a professional pitcher named in the Mitchell Report who said as a rookie he understood that if you wanted to be able to compete—this is him talking on Omaha Sports Talk—that he knew that he had to use it, that he felt that he didn't really have a choice in the matter. Now that is just his way of defending. But I think there is a lot of truth to that, that if the folks he has to compete with to get onto the roster are using them then you have got to use them. Then you look at the college ranks. Well, if I am going to get to the top level where I am going to be compared to those folks at the pro level and they are on steroids, then I have

got to start taking them now. And it trickles down then into the high school levels.

So we have to deal with both of those, hero worship and the very fact that if they want to compete at the highest levels, there is a thought process that you have to use these anabolic steroids or human growth or whatever is going to be next. And it is important to society as a whole that our professional sports eliminate this drug from their respective sports.

And so I want to know what the highest level of prevention can be, what do the rules have to do? Do we have to go to blood testing, random blood testing? What does it need to do? How can the sports work together? Do we need to have a universal standard for each sport, whether it be hockey or football or baseball? Is it the Olympic standard? What would that be? But I think we need to elevate this to what is the best practice to eliminate any of these type of cheating drugs from our sports not because it gives one player the advantage over the other per se in a cheating manner, but how it trickles down and affects society as a whole.

So I want to hear what efforts, especially baseball, since that has been the sports that has been picked on because there has been reports all the way back to John Rocker in early 2000 that said that team physicians were advising on how to use this. So it looks like there has been a pattern in baseball and that is why they have been chosen as the poster boy. The reality is it affects every sport. So I want to hear from you and what you are going to do, and I yield back my time.

Mr. RUSH. The Chair thanks the gentleman. The Chair now recognizes the gentleman from Texas, Mr. Burgess, for 5 minutes.

**OPENING STATEMENT OF HON. MICHAEL C. BURGESS, A
REPRESENTATIVE IN CONGRESS FROM THE STATE OF TEXAS**

Mr. BURGESS. Thank you, Chairman Rush. I know we have got a lot of stuff to get through this morning so I do want to try to be very brief. I will thank the witnesses for giving of their time to be with us today. A lot of people have asked the question about the wisdom of holding yet another hearing. Mr. Chairman, I think I feel obligated to point out that if Congress has a role in this matter, this is the appropriate committee. This is the appropriate subcommittee, the Subcommittee on Commerce, Trade, and Consumer Protection. This is the appropriate place to be holding these hearings because we are the subcommittee with the legislative authority. We are the subcommittee with in fact the legislative duty to craft legislation, craft laws that deal with this matter. So I am proud of my chairman and ranking member who have chosen to conduct this hearing. And I am also proud that they have elected to hold this focused on the future, not so much of revisiting what has happened in the past. But where do we go from here, how do we go forward?

So thank you, Chairman Rush, and Ranking Member Whitfield, thank you for your commitment to integrity, not just the integrity of the subcommittee and the committee but the integrity of competition in the broader scale.

We do need to focus on the future because after all, in my opinion, where we really should be concentrating is on what is hap-

pening to our children who aspire to be student athletes and go on to a career, a career in athleticism. And it is after all in our young people where the particularly pernicious practice of using performance-enhancing drugs, that is really where it takes center stage.

My whole State of Texas—and everyone knows Texas. We love our high school football in Texas. Don't ever do a political event on a Friday night because you are going to get in trouble. But my home State of Texas took a very tough stance on steroid usage and enacted legislation that grants the university interscholastically the authority to establish rules and penalties for the use of performance-enhancing drugs among student athletes. For a State athlete in Texas to be eligible to participate in a university interscholastic league sporting event, he or she must agree first off not to use performance-enhancing medications but also agree to be subject to random testing and to complete an educational and training program on athlete anabolic steroid use. According to the Dallas Morning News, this will be the largest student drug testing program in the Nation. And we will require that an estimated 22,000 student athletes submit to this random testing. And certainly there are people who are going to question the validity, the constitutional validity of this. But I think the Texas legislature made some strong steps in the right direction, and I certainly applaud their commitment to the future of the children in Texas, and I hope that perhaps their legislation can be a model that is incorporated nationally.

Again, Mr. Chairman, thank you for keeping us focused on the real issue of this debate, and I will yield back the balance of my time.

Mr. RUSH. The Chair thanks the gentleman. The Chair now recognizes the gentleman from Pennsylvania, Mr. Pitts, for 5 minutes for an opening statement.

OPENING STATEMENT OF HON. JOSEPH R. PITTS, A REPRESENTATIVE IN CONGRESS FROM THE COMMONWEALTH OF PENNSYLVANIA

Mr. PITTS. Thank you, Mr. Chairman, for holding this hearing to examine issues relating to drugs in sports and the importance of upholding the integrity of hard work and competition. While the majority hearing is focused on the use of cheating and steroids in humans, I commend you for also examining the issue of cheating and steroid abuse in racehorses. We will hear about that in our second panel.

Humans who use steroids have a choice about whether or not to use those substances and subsequently whether or not to damage their health. In horse racing, horses never have a say when they are injected with any type of performance-enhancing drug and they are helpless against the abuse. Unfortunately, horses do have to suffer through the negative health effects of any forcible steroid injections they receive. Randy Moss, an ESPN horse analyst on the national thoroughbred racing blog, wrote on December 19, 2007, quote, thoroughbred racing should have reacted at the first hint of widespread steroid abuse in other sports. After all, the same types of anabolic steroids are commonly used on racehorses and some prominent trainers even insist the sport will suffer if steroid use

is prohibited. The message needs to be loud and clear, horses should not be allowed to run with anabolic steroids in their systems. Long-term health issues associated with steroids are even more toxic for racing, since horses don't have a say in what goes into their bodies, end quote.

One academic expert on pharmacology indicated at the New Bolton Center at the University of Pennsylvania, which is in my congressional district, that they did spot checks of racehorses and discovered that 60 percent of those horses tested positive for steroids. Proactive protection by racing commissions and various horse associations against abuse of horses should help address this reportedly widespread problem.

According to one report, Bennett Liebman, racing expert and instructor at Albany law school, believes that, quote, steroid use in racing is rampant and has been for years, end quote.

It is important that the appropriate organizations examine the scope of steroid use and abuse of horses so the issue can be properly addressed. I commend the Pennsylvania Horse Racing Commission for their new program, which is scheduled to begin on April 1, 2008, to test horses for steroid use in order to stop this practice and provide a more level, more fair competition for competitors, let alone more healthy and safe environment for horses. And I look forward to hearing from our distinguished witnesses today, particularly regarding the positive, proactive steps their associations will be taking to help end the use of drugs in sports.

As far as the racehorse industry is concerned, I hope the second panel will answer the question to what extent the Federal Government's oversight role should be in monitoring the abuse of horses. Athletes and racehorses deserve to be recognized for winning well through hard work, skill and determination, not through drug abuse. And I yield back.

Mr. RUSH. The Chair thanks the gentleman. This concludes the opening statements of the members of the subcommittee. We will now proceed to the opening statements of the first panel. But before I introduce the first panel, I would like to say a few words on two invited panelists who are not here this morning.

First, Senator George Mitchell wanted to testify at today's hearing and discuss the recommendation of his report. Unfortunately, the Senator is receiving radiation treatment for cancer in New York and is unable to attend this morning's proceedings. Fortunately, it is my understanding that Senator Mitchell is expected to make a full recovery and his long-term prognosis is quite good. I know that many people in this room share my deepest respect and admiration for Senator Mitchell and his long-term work. Our thoughts and our prayers to go to him and we wish him and his family the best in his recovery.

Senator Mitchell has submitted a written statement and I would like to ask for unanimous consent to have his statement entered into the record. Without objection, so ordered.

[The proposed statement of Mr. Mitchell follows:]

STATEMENT OF HON. GEORGE J. MITCHELL

Mr. Chairman, Congressman Whitfield, Members of the Subcommittee, thank you for inviting me to appear before you this morning.

In March 2006 I was asked by the Commissioner of Baseball to conduct an Independent Investigation into the Illegal Use of Steroids and Other Performance Enhancing Substances in Major League Baseball. When he asked me to accept this responsibility, the Commissioner promised that I would have total independence and his full support. He kept that promise.

In December I completed and made public my report. In this statement I will provide a brief summary of our conclusions. I will then focus on the report's broader findings and recommendations.

The illegal use of steroids, human growth hormone, and other performance enhancing substances by well known athletes may cause serious harm to the user. In addition, their use encourages young people to use them. Because adolescents are already subject to significant hormonal changes, the abuse of steroids and other such substances can have more serious adverse effects on them than on adults. Many young Americans are placing themselves at serious risk. Some estimates appear to show a recent decline in steroid use by high school students. That's heartening. But the most recent range of estimates is from about 2 to 6 percent. Even the lower figure means that hundreds of thousands of high school-aged young people are illegally using steroids. It's important to deal with well known athletes who are illegal users. But it's at least as important, perhaps even more so, to be concerned about the reality that hundreds of thousands of our children are using these substances. Every American, not just baseball fans, ought to be shocked by that disturbing truth.

During the period discussed in my report, the use of steroids in Major League Baseball was widespread, in violation of federal law and baseball policy. Club officials routinely discussed the possibility of substance use when evaluating players. The response by baseball was slow to develop and was initially ineffective. The Players Association had for many years opposed a mandatory random drug testing program, but they agreed to the adoption of such a program in 2002, after which the response gained momentum.

Since then, the major league clubs and the Players Association have agreed to a number of improvements to the program, including stronger penalties, that have increased its effectiveness. The current program has been effective in that detectable steroid use appears to have declined. However, many players have shifted to human growth hormone, which is not detectable in any currently available urine test. The minority of players who used these substances were wrong. They violated federal law and baseball policy, and they distorted the fairness of competition by trying to gain an unfair advantage over the majority of players who followed the law and the rules. They - the players who follow the law and the rules - are faced with the painful choice of either being placed at a competitive disadvantage or becoming illegal users themselves. No one should have to make that choice.

Obviously, the players who illegally used performance enhancing substances are responsible for their actions. But they did not act in a vacuum. Everyone involved in baseball over the past two decades - Commissioners, club officials, the Players Association, and players - shares to some extent in the responsibility for the steroids era. There was a collective failure to recognize the problem as it emerged and to deal with it early on. As a result, an environment developed in which illegal use became widespread.

Knowledge and understanding of the past are essential if the problem is to be dealt with effectively in the future. But being chained to the past is not helpful. Baseball does not need and cannot afford to engage in a never-ending search for the name of every player who ever used performance enhancing substances.

In my report I acknowledged and even emphasized the obvious: there is much about the illegal use of performance enhancing substances in baseball that I did not learn. There were and are other suppliers and users. And it is clear that a number of players have obtained these substances through so-called rejuvenation centers, using prescriptions of doubtful validity. Other investigations will no doubt turn up more names and fill in more details, but that is unlikely to significantly alter the description of baseball's steroids era, as set forth in my report.

The Commissioner was right to ask for this investigation and report. It would have been impossible to get closure on this issue without it, or something like it. But it is now time to look to the future, to get on with the important and difficult task that lies ahead. I urge everyone involved in Major League Baseball to join in a well-planned, well-executed, and sustained effort to bring the era of steroids and human growth hormone to an end and to prevent its recurrence in some other form in the future. That's the only way this cloud will be removed from the game.

The adoption of the recommendations set forth in my report will be a first step in that direction, and I will now summarize them. While some can be and have been implemented by the Commissioner unilaterally, others are subject to collective bar-

gaining and therefore will require the agreement of the Players Association. The recommendations focus on three areas.

First, there must be an enhanced capacity to conduct investigations based on non-testing evidence. Some illegal substances are difficult or virtually impossible to detect. Indeed, one leading expert has argued that "testing only scratches the surface." The ability to investigate vigorously allegations of violations is an essential part of any meaningful drug prevention program.

The Commissioner has accepted my recommendation to create a Department of Investigations, led by a senior executive, to respond promptly and aggressively to allegations of the illegal use or possession of performance enhancing substances. To do its job effectively, this department must establish credibility and cooperate closely with law enforcement agencies. I recommended that the Commissioner strengthen pre-existing efforts to keep illegal substances out of major league clubhouses by logging and tracking packages shipped to players at major league ballparks, conducting background checks and random drug tests on clubhouse employees, and adopting policies to ensure that allegations of a player's possession or use of performance enhancing substances are reported promptly to the Department of Investigations.

I also recommended that club personnel with responsibility affecting baseball operations be required to sign annual certifications that they have no unreported knowledge of any possible violation of Major League Baseball's Drug Prevention Policy.

The Commissioner has implemented all of these recommendations.

Second, improved educational programs about the dangers of substance use are critical to any effort to deter use. Over the last several years, the Commissioner's Office and the Players Association have made an increased effort to provide players and club personnel with educational materials on performance enhancing substances. Several suggestions for improvement in this effort are set forth in my report.

Third, although it is clear that even the best drug testing program is, by itself, not sufficient, drug testing remains an important element of a comprehensive approach to combat illegal use. The current program was agreed to in 2006 and will remain in effect until 2011. Any changes to the program therefore must be negotiated and agreed to by the clubs and the Players Association. In my report, I set forth the principles that presently characterize a state-of-the-art drug testing program, and I urged the clubs and the Players Association to incorporate them into baseball's program when they next deal with this issue.

The program should be administered by a truly independent authority that holds exclusive authority over its structure and administration. It should be transparent to the public, allowing for periodic audits of its operations and providing regular reports of aggregate data on testing and test results. It should include adequate year-round unannounced testing, and employ best practices as they develop. To ensure that the independent administrator can accomplish these objectives, the program should receive sufficient funding. And it should continue to respect the legitimate privacy and due process rights of the players.

My report demonstrates that I'm not an apologist for either the Commissioner or the Players Association. But in fairness, I think we should recognize what they have done to address this problem. As noted in my report, prior to the 2002 negotiations, the Commissioner took several key steps to lay the foundation for an agreement on a mandatory random drug testing program, including: In early 2001, he convened a meeting of several respected team physicians, during which they shared their own experiences and concerns about the use of steroids by major league players. That year he unilaterally imposed a drug testing program for minor league players, which he could do because minor league players are not represented by the Players Association. In 2002, after detailed negotiations, the Players Association agreed to the Commissioner's proposal for a mandatory random testing program in the major leagues. To their credit, this was a significant step by the Players Association because, as I noted earlier, they had for many years opposed such a program.

The drug testing programs in all sports, including the Olympics, have evolved over time through a process of trial and error, as the programs were modified to address emerging problems and concerns. In that respect, baseball's program has been like all the others. As described in my report, since 2002 the Commissioner and the Players Association have agreed to several improvements in the program to deal with issues as they arose.

Mr. Chairman, members of the Subcommittee, I was asked to conduct an inquiry and to report what I found as accurately, as fairly, and as thoroughly as I could. I've done so, to the best of my ability, and my work has been completed. Now it's up to the Commissioner, the clubs, and the players, to decide how they will proceed.

Their actions over the past six years have demonstrated that they can address this problem through the collective bargaining process. I hope they will do so again.

Mr. RUSH. Second, Mr. Vince McMahon, the Chairman of the Board for World Wrestling Entertainment, was also invited to testify at today's hearing. Mr. McMahon was the only witness, the only one to decline our invitation, and I am extremely and exceptionally disappointed with his decision. I received a letter on January 28 from the attorney representing Mr. McMahon indicating that he, the lawyer, could not be in Washington on the hearing date. I fully understand their scheduling issues, and circumstances arise that make attending a congressional hearing in Washington, D.C. difficult. However, today's hearing is not a trivial matter. And all, each and every one of today's witnesses made the necessary accommodation to be here this morning. And I am going to take a moment to thank you all for making that very, very hard and difficult effort to be here this morning.

I for one am not convinced that Mr. McMahon's reasons for not attending are any more compelling than are the difficulties and inconveniences faced by you, the other witnesses. Steroid abuse in professional wrestling is probably worse than in any professional sports or amateur sport. And while I recognize that professional wrestling is not actually, quote, a sport, end quote, it certainly requires a great deal of athletic talent, it is immensely popular with young people, including children, and many of their high profile athlete entertainers have fatally abused steroids and other drugs. The number of deaths in professional wrestling ranks is startling, to say the least. And the tragedy of Chris Benoit has been well documented.

I want to ensure Mr. McMahon that this committee, this subcommittee fully intends to deal with the illegal steroid abuse in professional wrestling, and we hope he will be a part of the solution and not part of the problem. We intend to proceed deliberately on this particular matter. We have options. Mr. McMahon should and must be willing to cooperate with the undertakings of this subcommittee and we expect no less.

With that, I am pleased to introduce the witnesses on the first panel. Starting at my far right, Allan H. "Bud" Selig, who is the Commissioner of Major League Baseball; Donald Fehr, the Executive Director of the Major League Baseball Players Association; David Stern, Commissioner of the National Basketball Association; G. William "Billy" Hunter, Executive Director of the National Basketball Players Association; Roger Goodell, Commissioner of the National Football League; Gene Upshaw, Executive Director of the National Football League Players Association; Gary Bettman, the Commissioner of the National Hockey League; Paul Kelly, the Executive Director of the National Hockey League Players Association.

We want to thank you for taking the time out again for being present before this subcommittee, and we will recognize Mr. Selig. Please limit your remarks to 5 minutes. Mr. Selig, you are recognized for opening statements.

**STATEMENT OF ALLAN H. "BUD" SELIG, COMMISSIONER, THE
OFFICE OF THE COMMISSIONER OF BASEBALL**

Mr. SELIG. Thank you. Good morning, Chairman Rush, Ranking Member Whitfield, and other members of the committee. I thank you for the opportunity to testify this morning. As the Commissioner of Baseball, I have confronted many difficult problems. At the outset I want to acknowledge the constructive role that the committee, including its former chairman, Congressman Stearns, and Chairman Rush, has played in helping baseball come to grips with the magnitude of the problem of performance-enhancing substances.

As I have said previously, I accept responsibility for the fact that baseball was slow to react to this problem. Today, the most important thing is that we continue to work together in the fight against performance-enhancing substances. When I became Acting Commissioner in 1992, baseball's economic system was so ineffective and outdated that it was undermining the core competitive character of our game and compromising the integrity of our sport. Moreover, our labor relations were so dysfunctional that the game had endured an unbroken string of work stoppages that threatened to alienate even our most loyal fans. We confronted these problems, and as a result, today, the great game of baseball is more popular than ever with fans across America.

As difficult and complex as these problems were, none was more difficult than the issue of performance-enhancing substances. The use of steroids and human growth hormone is difficult to detect because it involves clandestine behavior by users and the science of cheating constantly changes. It is divisive because it pits players who use such substances against those who do not. It is corrosive to the integrity of our game because it creates an unfair advantage on the field, and it is dangerous both to the players who use these substances and the other people who emulate these players.

Major League Baseball has acted aggressively to combat the use of performance-enhancing substances by our players. In 1994, we made a thorough and detailed proposal to the union on drug testing and it was rejected. In 2001, I implemented the first industry-wide drug testing program in our Minor League system where I was free to act unilaterally. I have continually improved that program by adding more banned substances and imposing tougher discipline. I have also expanded the program to cover players in the Dominican and Venezuelan summer leagues. In the initial year of the Minor League program, we had a positive rate of 9 percent. By 2007, that rate had declined to less than half of 1 percent.

In 2002, we overcame the Players Association's historic opposition to drug testing of any type and negotiated the first-ever Major League drug testing program. Since that time we, along with the Players Association, have taken the unprecedented step of twice reopening our collective bargaining agreement to toughen our joint policy.

Our current policy, complete with disciplinary provisions of 50 games, 100 games, and life, is the strongest in professional sports. Senator Mitchell's recent report found that the program has been effective in deterring the use of detectable steroids. In fact, we had nearly 100 positive tests in the 2003 survey test and just two ster-

oid positives in 2006 and three in 2007. Moreover, on our own initiative, we banned amphetamines and other stimulants in 2006. We test for these stimulants on game days, both before and after the game.

I understand that new challenges like human growth hormone will continue to emerge. As a result, Major League Baseball has been active in research and education. We have provided the initial funding for Dr. Don Catlin's effort to develop a urine test for human growth hormone, a project subsequently joined by the NFL. We are a founding member, along with the USOC and the NFL, of the Partnership for Clean Competition, an ongoing multisport research program that will also include HGH testing research. Major League Baseball has also funded and worked closely with the Partnership for a Drug-Free America and the Taylor Hooton Foundation on educational efforts directed at preventing steroid use by young people.

Most recently, I unilaterally took the unusual but important step of commissioning the Mitchell investigation. I knew that looking into the past would be difficult and disturbing, but I was determined to learn the truth about what went wrong. I never wanted it to be said that I personally, or baseball as an institution, had something to hide.

I believe that the Mitchell Report will be a roadmap for our future efforts to deal with performance-enhancing substances. I am encouraged that Senator Mitchell found our program to be effective in dealing with steroids and that I recognize that HGH remains a problem for baseball and all sports. To the extent that the Report is critical of baseball, I first accept that responsibility. Equally important, I am committed to adopting Senator Mitchell's recommendations and continuing the fight against performance-enhancing substances.

I have already adopted all of the Mitchell recommendations that can be accomplished without collective bargaining. Baseball has created a new Department of Investigations to pursue non-analytical positives. Key department personnel have met with senior law enforcement officials to open and improve lines of communication. Background checks and drug testing of clubhouse personnel will be required in the 2008 season. Our policies requiring club personnel to disclose information on performance-enhancing drug use have been strengthened, and we have established a confidential hotline and Web site to encourage such disclosures.

Mr. SELIG. Other recommendations made by Senator Mitchell require bargaining with the Players Association. We have already reached agreement to eliminate the overnight advance notice of urine collections previously provided to clubs. Moreover, I have met personally with Don Fehr and a group of players about the Mitchell recommendations. My staff is involved in ongoing, detailed discussions. Unfortunately, we have not yet concluded that negotiation. Consistent with the Senator's report, I am committed to achieving a more independent, a more transparent and a more flexible program that will have adequate year-round, unannounced testing to deter the use of illegal substances.

Mr. RUSH. Please conclude.

Mr. SELIG. Okay. I am almost done.

Moving forward, I can assure you that Major League Baseball will remain vigilant and proactive in dealing with the issue of performance-enhancing drugs. But performance-enhancing drugs are a societal problem. Senator Mitchell's report identified the difficulties inherent in any attempt, whether by baseball, by other professional sports or by the Olympics, to stop by itself the use of illegal performance-enhancing substances. We welcome your participation in attacking the problem at its source. There are a number of bills that have been introduced that we wholly support, including Representative Lynch's bill, Senator Schumer's bill, Senator Grassley's bill and Senator Biden's bill to crack down on the sale of controlled substances over the Internet.

Thank you for providing me the opportunity to be here.
[The prepared statement of Mr. Selig follows:]

STATEMENT OF ALLAN H. SELIG

Good morning Chairman Rush, Ranking Member Whitfield and other members of the Committee. Thank you for the opportunity to testify this morning.

As the Commissioner of Baseball, I have confronted many difficult problems. When I became acting Commissioner in 1992, Baseball's economic system was so ineffective and outdated that it was undermining the core competitive character of our game and compromising the integrity of our sport. Moreover, our labor relations were so dysfunctional that the game had endured an unbroken string of work stoppages that threatened to alienate even our most loyal fans. We confronted these problems and, as a result, the great game of Baseball is more popular than ever with fans across America.

As difficult and complex as these problems were, none was more difficult than the issue of performance enhancing substances. The use of steroids and human growth hormone is difficult to detect because it involves clandestine behavior by users and the science of cheating constantly changes; it is divisive because it pits players who use such substances against those who do not; it is corrosive to the integrity of our game because it creates an unfair advantage on the field; and it is dangerous both to the players who use these substances and the young people who emulate those players.

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In 2002, we overcame the Players Association's historic opposition to drug testing of any type and negotiated the first-ever Major League drug testing program. Since that time, we, along with the Players Association, have taken the unprecedented step of twice reopening our collective bargaining agreement to toughen our joint policy. Our current policy, complete with a disciplinary provision of 50 games, 100 games and life, is the strongest in professional sports. Senator Mitchell's recent report found that the program has been effective in deterring the use of detectable steroids. In fact, we had nearly 100 positive tests in the 2003 survey test and just two steroid positives in 2006 and three in 2007. Moreover, on our own initiative, we banned amphetamines and other stimulants in 2005. We test for stimulants on game days, both before and after the game.

I understand that new challenges like Human Growth Hormone will continue to emerge. As a result, Major League Baseball has been active in research and education. We provided the initial funding for Dr. Don Catlin's effort to develop a urine test for Human Growth Hormone, a project subsequently joined by the NFL. We were a founding member, along with the USOC and the NFL, of the Partnership for Clean Competition, an on-going multi-sport research program that will also be involved with HGH-testing research. Major League Baseball has funded and worked closely with the Partnership for a Drug Free America and the Taylor Hooton Foundation on educational efforts directed at preventing steroid use by young people.

Most recently, I unilaterally took the unusual, but important, step of commissioning the Mitchell Investigation. I knew that looking into the past would be difficult and disturbing, but I was determined to learn the truth about what went wrong. I never wanted it to be said that I personally or Baseball as an institution had something to hide.

I believe that the subsequent Mitchell Report will be a road map for our future efforts to deal with performance enhancing substances. I am encouraged that Senator Mitchell found our program to be effective in dealing with steroids and I recognize that HGH remains a problem for Baseball and all sports. To the extent that the report is critical of Major League Baseball, I accept responsibility. Equally important, I am committed to adopting Senator Mitchell's recommendations and continuing the fight against performance enhancing substances.

I have adopted all of the Mitchell recommendations that can be accomplished without collective bargaining. Baseball has created a new department of investigations to pursue "non-analytical positives." Key department personnel have met with senior law enforcement officials to open and improve lines of communication. Background checks and drug testing of Clubhouse personnel will be required in the 2008 season. Our policies requiring Club personnel to disclose information on performance enhancing drug use have been strengthened and we have established a confidential hot line and web site to encourage such disclosures.

Other recommendations made by Senator Mitchell require bargaining with the Players Association. We have already reached agreement to eliminate the overnight advance notice of urine collections previously provided to Clubs. Moreover, I have met personally with Don Fehr and with a group of players about the Mitchell recommendations. My staff is involved in on-going, detailed discussions. Unfortunately, we have not yet concluded that negotiation. Consistent with the Senator's report, I am committed to achieving a more independent, a more transparent and a more flexible program that will have adequate year-round, unannounced testing to deter the use of illegal substances.

Moving forward, I can assure you that Major League Baseball will remain vigilant and proactive in dealing with the issue of performance enhancing drugs. But performance enhancing drugs are a societal problem. Senator Mitchell's report identified the difficulties inherent in any attempt, whether by Baseball, by other professional sports, or by the Olympics, to stop by itself the use of illegal performance enhancing substances. We welcome your participation in attacking the problem at its source. There are a number of bills that have been introduced that we wholly support, including Representative Lynch's bill (HR 4911) and Senator Schumer's bill (Senate Bill 877) to make HGH a Schedule III Controlled Substance, Senator Grassley's bill (Senate Bill 2470) to prohibit the sale of DHEA to minors, and Senator Biden's bill (Senate Bill 2237) to crackdown on the sale of controlled substances over the Internet.

Thank you for providing me the opportunity to be here.

Mr. RUSH. Mr. Fehr, please be reminded—and the other witnesses—that your statements have been read and are a part of the record. Please summarize your statements in 5 minutes, if you will.

**STATEMENT OF DONALD FEHR, EXECUTIVE DIRECTOR,
MAJOR LEAGUE BASEBALL PLAYERS ASSOCIATION**

Mr. FEHR. Thank you, Mr. Chairman, Mr. Ranking Member and other members of the subcommittee.

As you know, I serve as the Executive Director of the Major League Baseball Players Association, and I appreciate the opportunity to be here this morning.

As I previously testified, playing Major League Baseball requires talent, drive, intelligence, and determination. Unlawful performance-enhancing substances have no place in the game. We can't change the past. We can learn from it.

As I testified a month ago—or a little more than that—before Government Oversight, the problem was larger than we realized and certainly than I did. And to the extent responsibility should be taken we do, and in particular I do. But, as I think the Mitchell

Report demonstrated, since we began with our first agreement in 2002, we have worked vigorously to rid the game of these substances and have made I think very great progress. I reaffirm our commitment to continue that effort.

Today, we have a program which we believe is both effective and fair. It was widely praised by Members of Congress in both Houses when it was implemented in 2005. It is independently administered, state of the art, random unannounced testing year round, tests mostly on game days, uses appropriate WADA-certified labs, has stiff penalties, and it has been subject to regular discussion and improvement.

Human growth hormone is a difficult and perhaps unique challenge. That is because there are no commercially available blood or urine tests which can yet be used. That was the case when I testified before this subcommittee 3 years ago. It remains the case today.

So what have we done? We banned HGH. We agreed to test for it as soon as a scientifically valid urine test exists. We have agreed to procedures which allow players to be suspended for evidence other than a positive test for HGH use, and they have been. And should a scientifically valid, accurate, commercially available blood test be available to us, we will consider it in good faith. But, as Senator Mitchell noted, even the blood tests now under consideration may be of limited practical utility.

I therefore have a specific suggestion. That would be that perhaps the Congress could consider requiring that in prescription HGH some sort of a chemical marker be added to the drug so that it would be detectable in urine tests.

We can't do this alone. As has been reflected in some of the opening statements, this is a problem much broader than professional sports. When we went on Google yesterday and typed in "where can I buy HGH", we got two million options in less than a quarter of a second. Ads for HGH, or what is reputed to be HGH, are available nationwide.

I agree that the bills introduced by Representative Lynch, Senator Schumer, Senator Grassley and others may help. But the Congress we think can do more. Consideration could be given to taking action against the unlawful online sales and marketing of HGH and in particular to examining why so much of this product seems to be so freely available. And, as I have previously suggested, perhaps the Congress should do an examination as to whether the Dietary Supplement, Health and Education Act is being adequately enforced.

Senator Mitchell was hired to do a report. He did his job well. We represented our members well, as we are required to do by Federal law in that process. We don't apologize for that.

But I would just ask everyone to remember that what Senator Mitchell found was very specific, that after the current program was implemented we are detecting the steroids capable of being detected. As the Commissioner testified, in more than 6,000 tests over the last two seasons we had only five steroid positives.

Now we have been asked once again to reopen our collective bargaining agreement. No union and no management lightly takes the suggestion that it ought to be reopened. The contract is the life-

blood of every union. However, you have my commitment, as I testified a month ago, that we will discuss all of Senator Mitchell's recommendations.

And those discussions are in progress. I will begin meeting with players on individual teams tomorrow in spring training, which was impossible to do over the winter, to discuss these various issues, among other things.

There are some things that we want to talk about, too, in those discussions. Among those would be that allegations against players ought not to be publicly aired until there is an opportunity for some due process procedure by which they can be tested. But the players will engage in these discussions in good faith.

Last, as the Congress has repeatedly noted over the years, collective bargaining is the appropriate forum in which to deal with matters affecting terms and conditions of employment, even matters as sensitive and controversial as suspicionless drug testing. We believe that the evidence reflects that we can deal with the problem when the technology is available, and we believe that's where it should remain.

Thank you.

Mr. RUSH. I want to thank you.

[The prepared statement of Mr. Fehr follows:]

BEFORE THE UNITED STATES
HOUSE OF REPRESENTATIVES

COMMITTEE ON ENERGY AND COMMERCE

SUBCOMMITTEE ON COMMERCE, TRADE,
AND CONSUMER PROTECTION

STATEMENT OF DONALD M. FEHR
EXECUTIVE DIRECTOR, MAJOR LEAGUE
BASEBALL PLAYERS ASSOCIATION

27 FEBRUARY 2008

Mr. Chairman and Members of the Committee:

My name is Donald M. Fehr, and I serve as the Executive Director of the Major League Baseball Players Association (MLBPA). I appear today in response to the Chairman's invitation to testify.

Let me begin by once again stating the MLBPA's position. As I said when I appeared before this Committee nearly three years ago, the Major League Baseball Players Association does not condone or support the use by players - or by anyone else - of any unlawful substance, nor do we support or condone the unlawful use of any legal substance. I cannot put it more plainly. The unlawful use of any substance is wrong.

Moreover, the Players are committed to dispelling any suggestion that the route to becoming a Major League athlete somehow includes taking illegal performance enhancing substances, such as steroids. It does not take a physician to recognize that steroids are powerful drugs that no one should fool around with. This is particularly true for children and young adults, as the medical research makes clear that illegal steroid use can be especially harmful to them.

Playing Major League Baseball requires talent, drive, intelligence, determination, and grit. Steroids and other unlawful performance enhancing drugs (PEDs) have no place in the game.

I appeared before this Committee in May 2005. That same year I testified before the Senate Commerce Committee and also the House Government Reform Committee. In 2004 I appeared before the Senate Commerce Committee. And just last month I again testified at a hearing of the House Oversight and Government Reform Committee.

At the hearings held in 2004 and 2005 I believe that I explained the Joint Drug Agreement (JDA) that we had reached in 2002 and which began to operate in 2003, would be effective in ridding the game of unlawful PEDs. But there was strong interest in the Congress for us to do more. Accordingly, the Players took the virtually unprecedented step of twice reopening the collective bargaining agreement in order to strengthen the JDA. We announced a stronger program in January 2005, and, then, in November, 2005, announced the Joint Drug Program that is in place today.

Among other things, the November, 2005 agreement greatly increased penalties, significantly increased the number and frequency of tests, added off-season-testing, and provided that the program would be run by an Independent Program Administrator (IPA). When our November 2005 agreement was announced, it was praised by members of Congress of both Houses, many of whom had taken part in the various hearings. It was said to be the standard against which other leagues' programs should be measured; that it was what Congress was hoping for all along; and, that it was proof that the collective bargaining process had worked.

For his part, at the time that this agreement was announced, the Commissioner of Baseball said it was “the most stringent steroid testing program in sport.” In his testimony before Government Reform last month, the Commissioner said much the same thing, calling our program the “strongest in professional sports.” The agreement he praised is scheduled to run through December 2011, as do the other provisions of our collective bargaining agreements.

We agree with the Commissioner. Our agreement is the best in American professional sports. Our testing procedures are indeed state-of-the-art. The tests are conducted and the samples are collected by a well-respected independent company based in California, and the samples are analyzed by the world-class WADA-certified Olympic lab in Montreal.

Moreover, our agreement contemplates that we will discuss improvements during its term, and we have done so. For example, over the past two years, the parties have implemented changes - what Senator Mitchell calls “best practices” - including the following:

- We have added language confirming that players may be disciplined for “non analytical positives” i.e., - violations of the Program that are proven through means other than testing. And this has led to a number of publicly announced suspensions;

- We have improved our rules for processing therapeutic use exemptions.
- We have improved our collection procedures by adding player chaperones who are charged with watching players once they've been notified they are going to be tested that day.
- We have shortened the notice period given to Clubs that a collector is coming to the ballpark. Notice is now given the same day and only a few hours before the collector arrives;

And so, the program that in November 2005 was hailed as the standard for other sports has been strengthened over the past two years. As Senator Mitchell noted in his recent report (p. 276), baseball's program has the toughest penalties. We require year-round random testing, test players at the site of competition, test primarily on game days, test for stimulants in addition to steroids, and our program is run by an independent administrator.

Senator Mitchell also pointed out that our JDA is working to uncover the use of detectable performance enhancing substances. With respect to steroids, the numbers are clear: We have conducted more than 3,000 tests in each of the last two years, and the number of steroid positives we have had during that time is five. More precisely, during 2006 and 2007 we conducted 6,252 tests, and there were five steroid positives (two in 2006 and three in 2007).

But, some ask, what about undetectable PEDs, most notably Human Growth Hormone (HGH)? Have players switched to HGH, for which there is no currently available test, in order to avoid the testing regime? As I said last month, there is what appears to be well-founded concern about players using HGH. We have banned HGH. We have agreed to test for it as soon as a scientifically valid urine test exists. We have developed and agreed to procedures under which players may be suspended for HGH use based on evidence other than a positive test, a so called "non-analytical" finding. In each of the last two years, players were suspended on that basis.

Of course, it is possible that a scientifically valid blood test for HGH will be developed and become commercially available before a valid urine test. However, as Senator Mitchell has indicated, if there is a blood test developed in the near future it may well be of very limited utility; i.e. a player will need to have used HGH a very short time before the test in order for it to show up. That remains to be seen. In addition there may well be very serious issues involved with blood tests for athletes, particularly with respect to tests on competition days, and in baseball we play nearly every day for seven months. As of now, no major professional sport has blood testing for PEDs.

Nevertheless, as I said at the Government Reform hearing last month, if and when a scientifically valid blood test becomes available, the players will consider it in good faith at that time based on the facts then known.

In addition, there clearly is more that we as players can do in the way of education. Telling our nation's kids that drugs will destroy them is only half the battle. The nation's high school athletes - - and their parents - - will still aspire to college scholarships and will still pursue their athletic dreams. Knowing what to do is as important as knowing what not to do. Ballplayers must lead the way in developing nutrition, strength, flexibility and wellness routines. In an era of child obesity, this may turn out to be an even more powerful idea than we can appreciate today.

I suggest, however, that the biggest problem with HGH is very probably its availability to the American public. Anti-aging clinics and others openly advertise in magazines stressing the benefits of HGH. We will continue to take steps against HGH, but this is a societal problem, not one limited to baseball, or even to sports. If we didn't know that before, the investigations into internet pharmacy sales of HGH made public over the last year have made this apparent. The percentage of HGH sales to professional athletes evidently is a small part of the total.

All one needs do in order to appreciate the magnitude of this problem is to go onto Google's website and type in the words, "Where can I buy HGH?" Last month, this search returned 349,000 options in a quarter of a second. Advertisements for HGH, or products touted as HGH, can be found in newspapers and magazines nationwide. For example, in a recent Continental Airlines magazine, on page 99, there appeared an advertisement with the following headline: "Choose life. Grow young with HGH." (I understand that this ad appears in the current issue, too.) Plainly, abuse of HGH and

other illicit (and licit) pharmaceuticals and supplements is not just a baseball problem, but a national one.

I understand that Senator Schumer and Representative Lynch have introduced legislation to reclassify HGH as a Schedule III drug, making its treatment comparable to that of anabolic steroids. This approach may well be worth consideration. But I hope consideration will also be given to addressing the dangers of online sales and marketing of HGH that are false and misleading and to determining why so much product is apparently available to organizations, such as Signature Pharmacy in Florida, which do not appear to be prescribing the pharmaceutical legitimately. And, as I have suggested before, serious consideration should also be given to doing a study to determine whether the Dietary Supplement Health and Education Act (DSHEA) is being adequately enforced and/or whether the law needs to be amended. Certainly a thorough review of DSHEA, and how it is interpreted and enforced, would appear to be warranted.

Let me now turn to the Mitchell Report. Since 2002, the players and owners have worked together effectively in many ways to deal with the problems involving PEDs in baseball. But the Mitchell Report was not such an effort. Senator Mitchell's investigation was a unilateral action undertaken by management. Commissioner Selig hired former Senator George Mitchell and his law firm, DLA Piper, to conduct the investigation on behalf of the owners. We had no role in it whatsoever. In such circumstances a union, including one which represents baseball players, is obligated

under federal law to represent its members – all of its members - in connection with the investigation.

The MLBPA fulfilled its responsibilities. Where we thought we could cooperate with the Mitchell investigation we did. Where the rights of our members needed to be asserted, we did that. We gave appropriate legal advice to the players (and to their individual counsel) with respect to the employment consequences of the investigation, and urged players to retain individual counsel where that was appropriate. In many ways, we thought the conduct of the investigation was unfair. But, for the most part, we have avoided speaking publicly about those issues, and it would serve no purpose to do so here.

Most of the media comment and reaction to what is contained in the report has focused on the individual players who were named by Senator Mitchell, and what they are alleged to have done. That is as unfortunate as it is understandable. But, in that process, an important point may have been lost. The Mitchell Report reveals virtually nothing about drug use under our current new agreement, i.e. 2006 and 2007. There is not a single allegation in the report about any individual who may have used steroids during that time. There is only one incident discussed involving a player and HGH during 2006. But that incident was publicly known at that time, and the player was disciplined. In short, whatever the case was prior to our November 2005 agreement, the Report does not even remotely suggest that our current JDA is failing. To the contrary, it confirms that it is working very well.

We have accomplished much in this area through joint endeavors. But due to the investigation which led to the Report, we were forced to assume our more traditional role of making sure that players being investigated by management were appropriately represented. Hopefully we will now be able to work together with the Clubs in a more collaborative way.

In light of the recommendations made in the Mitchell Report, we have now been asked to reopen our contract for a third time. That is something which neither unions nor employers often do. There are certainly strong policy reasons why an employer and a union should respect the sanctity of a collective bargaining agreement, including its term, and not engage in frequent mid-term renegotiations.

Even so, we have never refused to discuss changes to our JDA at any time during its term, and we will not do so now. We have already held meetings with the Commissioner and his representatives regarding possible changes in the aftermath of the Mitchell Report, and more meetings will be held soon. Indeed, the Commissioner made a proposal to us last week, and we expect to have further discussions, and proposals of our own in the near future. This subject will obviously be one of those discussed in our Spring Training meetings with the players on each of the 30 teams.

The Players will engage in these discussions in good faith. Our record over the last few years demonstrates a willingness to be flexible in this area in order to improve our program consistent with our bargaining responsibilities.

To summarize, clearly baseball has been through much in the last few years regarding performance enhancing drugs. We had a serious problem. Few, if any, appreciated the seriousness of that problem, including the MLBPA, and including me. But since we began attacking this problem we have made significant strides. We have a strong program, and all available evidence indicates that it is working and the use of detectable PEDs has declined dramatically, as Senator Mitchell himself pointed out.

I am aware that some members of Congress, including perhaps some on this Committee, are considering introducing legislation to create federally-mandated drug-testing in professional sports. With due respect, I do not think any such action is necessary, warranted, or appropriate.

When I testified before this Committee in 2005 I said then that we believed that we had negotiated a program that would work. I said then that all the evidence we had then indicated we were on the right track. Later that year we amended our program for the second time; and today we are considering amending it yet again. And now we have even more evidence, all of which indicates that our efforts are succeeding.

Under the National Labor Relations Act, the negotiation of terms and conditions of employment is committed to good faith collective bargaining between employers and the organizations selected by and representing employees. Needless to say, the agreements we have reached are a product of that process. We continue to believe that collective bargaining is the appropriate forum for consideration and resolution of these issues. A fundamental premise of our labor laws is that solutions devised by the parties in the workplace are more likely to be workable and enduring, precisely because they are forged by those parties, rather than by others outside that relationship, no matter how well intentioned they may be.

Accordingly, it should come as no surprise that the Players Association does not believe that any such legislation should be enacted. As Congress has repeatedly noted, collective bargaining is the appropriate forum in which to deal with matters affecting terms and conditions of employment, even matters as controversial and politically volatile as random suspicionless employee drug testing in the absence of significant concerns about public safety. And the recent record in baseball clearly shows that we are dealing with our problems.

Finally, it should be noted that any legislation governing drug testing in private industry surely raises troubling constitutional questions. Suspicionless drug testing, mandated by the federal government, can run afoul of the general Fourth Amendment requirement that searches must be based on individualized suspicion of wrongdoing. The reason asserted to justify deviation from this principle in the context of professional

sports may well fall short under the Supreme Court's reasoning in *Chandler v. Miller*, 520 U.S. 305 (1997). There, the court held that a Georgia statute requiring candidates for state office to submit to drug testing was unconstitutional. Among other things, the Court determined that the stated intention of having candidates set a good example was not sufficient to justify the inherent invasion of privacy. It is likely that a law governing drug testing in professional sports would face a serious challenge as well.

Let me conclude by stating the obvious. The last few years have been difficult for baseball as we have come to grips with this issue. We should have done more, and sooner. But the good news is that since we began to act several years ago, real progress has been made. Today, we have a strong, fair, and effective program in major league baseball, a program the players support and, most importantly, a program that works.

Mr. RUSH. The next witness is Mr. Stern, Mr. David Stern, the Commissioner of the National Basketball Association.

STATEMENT OF DAVID STERN, COMMISSIONER, NATIONAL BASKETBALL ASSOCIATION

Mr. STERN. Chairman Rush, Congressman Whitfield, and members of the subcommittee, I, on behalf of the National Basketball Association, agree with the sentiment underlying the opening statements.

I have appeared before this committee and others on this subject; and what I would say is that we cannot ignore the fact that young people, especially young athletes, look up to and attempt to emulate professional athletes. We cannot avoid the fact that illegal drugs, steroids in particular, go right to the heart of the integrity of our competition; and, third, they pose grave threats to the health of the players that ingest them.

That is why, since our last appearance here in 2005, we have, with the cooperation of the National Basketball Players Association, implemented a testing program that provides for four random tests a year between the beginning of training camp and the end of the postseason. That is why we have elected to use an independent agency to do that and to decide when those tests should occur, which players should be tested. That is why we use WADA-approved drugs; and that is why, together with our Players Association and our teams, we work diligently on educational campaigns both for our players and for the youth that are affiliated with our League and our teams.

As Chairman Rush pointed out, we have filed detailed statements that list those programs; and I will refer you to that if you need more information. And I thank you.

Mr. RUSH. I want to thank you, Mr. Stern.

[The prepared statement of Mr. Stern follows:]

STATEMENT OF DAVID J. STERN

Chairman Rush, Congressman Whitfield and Members of the Subcommittee:

The use by athletes of steroids and other performance-enhancing substances is an issue implicating the fundamental integrity of all athletic competition. The NBA, as a result, has a strong and continuing interest in ensuring that these drugs are not used by our players and that our games are conducted on a fair and legitimate basis. Steroids and performance-enhancing drugs also pose serious risks to the health of our players, which provides a separate and compelling rationale for preventing their use in the NBA. Finally, we cannot ignore the fact that young people - especially young athletes - look up to and attempt to emulate professional athletes. It is therefore incumbent on the NBA and its players to keep performance-enhancing substances out of our game in order to send the message to all our young fans that these substances have no legitimate place in athletic competition.

THE NBA'S ANTI-DRUG PROGRAM

Through the process of collective bargaining, the NBA and the Players Association adopted our first anti-drug program in 1983, with a focus on drugs of abuse - in particular, cocaine and heroin. In 1999, the NBA and the Players Association agreed to include steroids and performance-enhancing substances in that program, and from 1999 to 2004, through agreement with the Players Association, we added additional performance-enhancing substances to our list of banned drugs and expanded our on-going program to educate players about the dangers of these substances.

I should point out that the NBA, during this time, had no evidence of even minimal use of steroids or performance-enhancing drugs by NBA players. Nor are we aware of any such evidence today. But we believed then - and still believe today

- that a strong and effective anti-drug policy is the best way to ensure that these substances never enter the culture of the NBA, and to demonstrate to our fans the collective commitment of NBA teams and players to fair and legitimate competition.

In May of 2005, I appeared before this Committee and separately before the House Committee on Oversight and Government Reform, both of which had questions and concerns about performance-enhancing substances. Later that year, the NBA also provided information about our anti-drug program to the House Judiciary Committee. Not long after these events, the NBA and the Players Association entered into a new labor agreement, effective with the start of the 2005-06 NBA season, that included important modifications to our drug program.

Under our current collective bargaining agreement, all NBA players are tested four times between October 1 and June 30 of each season on a random, unannounced basis. Testing is conducted during the pre-season, regular season, and post-season, and players whose teams do not make the playoffs or are eliminated from the playoffs are subject to testing throughout the entire post-season.

The penalties for violators have also been increased. A first-time offender of the steroids and performance-enhancing drugs policy is suspended from his team for 10 games; a second offense results in a suspension of 25 games; a third offense results in a suspension of one (1) year; and the fourth offense results in the player's dismissal and disqualification from the NBA. Because the average player salary is now \$5.35 million, these suspensions have substantial financial consequences, and, because suspensions are publicly announced, they can also affect the player's off-the-court income and standing.

The foregoing penalties, we submit, are strict enough to punish violators appropriately, deter the use of steroids and performance-enhancing drugs in the NBA, and provide fair opportunities for players to conform their conduct appropriately. Indeed, since these drugs were first added to our Program in 1999, we have never had a player commit a second violation.

The NBA utilizes several independent entities and individuals to oversee and administer the Program. Dr. Stephen M. Taylor, who was educated at Harvard and Howard Universities and honed his skills as an addiction medicine specialist at New York University, is our Medical Director. In this capacity, Dr. Taylor serves as the medical review officer for all positive tests, confirms all positive tests, develops and implements treatment programs for players who need counseling or other medical intervention, and leads our efforts to educate players about the dangers of prohibited substances.

All urine specimens collected under the Program are analyzed by the Doping Control Laboratory at the INRS-Institut Armand-Frappier in Montreal, which is one of only three WADA-accredited laboratories in North America. The Director of the Laboratory, Dr. Christiane Ayotte, has been extensively involved with the anti-doping efforts of both the IOC and WADA for more than a decade, including her recent membership on WADA's Health, Research and Science Committee.

The scheduling and collection of specimens is performed by The National Center for Drug Free Sport (DFS), an independent company that also performs collections for the NCAA and other sports organizations. The NBA and the Players Association have no involvement whatsoever in DFS's scheduling of random drug tests or its selection of players for testing, and are provided no advance notice by DFS of when teams or specific players are scheduled to be tested. Random tests, which involve no advance notice to NBA players, are conducted on both non-game days and game days (both at shoot-arounds and pre-game).

The NBA also utilizes a Prohibited Substances Committee to review the Program's list of banned substances and address other anti-doping issues, such as advances in drug testing science and technology, on a regular basis. The Committee is comprised of three drug testing experts, as well as one representative from both the NBA and the Players Association. Those experts include Dr. Barry Sample, who served as the Director of the Anti-Doping Laboratory for the 1996 Summer Olympics in Atlanta, and Dr. Doug Rollins, who served as the Medical Director of the Doping Control Program for the 2002 Winter Olympics in Salt Lake City.

The NBA's list of banned substances has also been expanded to include more than 120 substances, including all of the steroids made illegal by the Anabolic Steroids Control Act of 2004 and additional steroids, stimulants and other substances banned by WADA. In addition, the initial threshold for a possible positive testosterone result was lowered to 4:1 (from 6:1), following a change that was made by WADA.

Human Growth Hormone (HGH), a substance whose use seems to be increasing among athletes as well as among the population as a whole, was one of the substances added to our banned substances list in 2005. Since that time, the Prohibited Substances Committee has been monitoring the development of a legitimate and valid urine test for HGH. Currently, such a test is not available. While we under-

stand that a blood-based HGH test will be available later this year in certain WADA-accredited laboratories, our current agreement with the Players Association does not provide for the collection of blood samples from players.

The Anti-Drug Program also includes several additional components that are worthy of mention here. For example, the Program provides for "reasonable cause" testing when evidence comes to light that a player has used or possessed a banned substance. This evidence is submitted to an Independent Expert, who determines whether there is "reasonable cause" for an authorization for testing for the player in question. If an authorization for testing is issued, the player is then tested randomly four times over the next six-week period, and these tests are supplemental to the requirement that the player be tested randomly four times each season.

The Program also includes a mechanism to discipline players for so-called "non-analytical positives" - i.e., a finding that a player has used or possessed a prohibited substance that is not based on a positive drug testing result. Such findings are made by an independent arbitrator under our labor agreement, who is also the person who hears and resolves any appeals filed by players who are disciplined under the Program.

Finally, players are automatically penalized for a criminal conviction involving the use or possession of a banned substance.

THE NBA'S EDUCATIONAL EFFORTS

The NBA's Anti-Drug Program contains a substantial education and counseling component. A brochure describing the Program is distributed to each NBA player during training camp, and a poster-sized list of the NBA's banned substances is displayed in each team locker room. During the season, each NBA player is required to attend a "team awareness" meeting, at which the Program and substance abuse issues are addressed by the Medical Director and other members of the Program's professional staff. In addition, prior to entry into the NBA, rookie players must attend a week-long "Rookie Transition Program," during which the dangers of drug and steroids use - among other topics - are addressed in full. And an anti-drug presentation is made at the NBA's Pre-Draft Camp in June of each year, where prospective NBA draftees are gathered.

The NBA and the Players Association have also emphasized the dangers of dietary supplements, which are not currently subject to regulation by the federal government. A special notice regarding dietary supplements is distributed to players at the start of each season and is displayed as a poster in each team locker room. The warning states in part:

"Use of supplements has been associated with high blood pressure, heart attack, stroke, seizure, and sudden death. These events have occurred in young adults, including elite athletes, in otherwise good health. . . . Because supplements are not regulated, their quality and potency may vary significantly from product to product. In fact, supplements may be contaminated with ingredients not listed on the label. Some of these ingredients may be harmful; others may be banned by the NBA/NBPA Anti-Drug Program, and could lead to a positive drug test."

We recognize that one of the Committee's concerns is the extent to which young people, both athletes and non-athletes, are using steroids and other performance-enhancing substances today. The NBA is fully supportive of efforts to better educate our young fans about the dangers of these substances, as well as the dangers of drugs of abuse such as marijuana and cocaine. Indeed, the NBA, its teams, and its players have made numerous contributions to organizations and initiatives that counsel against substance abuse.

The NBA has a long-standing relationship with the Partnership for Drug-Free America, and has generously supported their anti-drug programs throughout the years -- including through the regular airing of public service announcements involving NBA players. The NBA has also worked with the Partnership in developing its "Training With Integrity" materials for members of the Jr. NBA and Jr. WNBA, a nationwide support program for youth basketball leagues that reaches approximately 2 million children annually. The "Training With Integrity" materials, which discuss the dangers of both recreational and performance-enhancing drugs, and encourage good health and proper training, are distributed to participating children, parents, and coaches.

Together with the National Federation of High Schools, the NBA, through its "NBA Cares" initiative, has contributed to the development and creation of a DVD focusing on the dangers of steroid abuse. This DVD has been made available to the more than 16,000 high schools nationwide that are Federation affiliates.

NBA teams are also involved in educating the public, particularly young people, about the dangers of drug use. For example, for more than 15 years, the San Anto-

nio Spurs have sponsored the Drug-Free Youth Basketball League, an eight-week basketball league which offers over 20,000 at-risk youth the opportunity to play basketball and learn the importance of team work, sportsmanship, and discipline in a drug-free and safe environment. The Spurs also run Spurs Night Hoops, a basketball league for teenagers, in which volunteer coaches provide education to the players about the dangers of, among other substances, performance-enhancing drugs. The Miami Heat have hosted the Heat Steroids Seminar for middle and high school students and physical education instructors from the Miami-Dade County public schools. Heat personnel, including players, participate in this seminar, which provides an anti-drug message and focuses on healthy training alternatives. The Indiana Pacers have recently developed a Be Drug Free grant fund that is open to all organizations whose mission is to help young people remain drug-free.

Since 2005, in addition to these educational efforts, the NBA has become involved in other initiatives intended to prevent and combat the use of steroids and performance-enhancing drugs. Last year, for example, we joined with the other major sports leagues in initiating a dialogue with several agencies of the federal government, including the Drug Enforcement Agency and the Department of Justice, designed to foster additional communication and cooperation about performance-enhancing drugs. Two meetings were held in 2007, and the parties intend to continue to work together to foster stronger relationships and to educate the public about the dangers associated with the use of these substances.

The NBA has also joined The Partnership for Clean Competition, the recently-launched collaboration between the United States Olympic Committee and certain professional and amateur sports organizations, by pledging an initial contribution of \$500,000. The collaboration's mission is to support independent scientific research on the scientific implications of sports doping and the development of the most effective tests to detect the use of banned substances. Specifically, the Partnership will fund research concerning the detection of HGH, the analysis and examination of genetic technologies in doping, and the development of tests that can be made available to colleges, high schools, and youth sports organizations on a cost-effective basis.

COMMENTS ON POTENTIAL LEGISLATION

I believe that the NBA's current anti-drug program is strong, effective, and appropriate for our sport, and remain committed to ensuring that it remains state-of-the-art. I am confident that any necessary modifications to our program can be made through the collective bargaining process with the Players Association, as we have successfully done in the past. Indeed, a drug program that is the product of agreement between management and labor will always be superior to one that is imposed from the outside, as the parties to the agreement will be invested, as we are, in its success.

For this reason, federal legislation in this area is not necessary for the NBA. Nor do I believe that a uniform, federally-mandated approach to drug testing for all sports leagues would be appropriate. For example, while we believe it is important to prohibit a broad list of performance-enhancing substances, as we do in our Program, we do not believe that the entire WADA list of prohibited substances is right for the NBA. Similarly, while stiff penalties are necessary for the legitimacy of any anti-drug program, we believe that the penalties contained in our labor contract - and not the excessive penalties that were previously proposed by Congress - are fair and appropriate for our sport. And finally, we do not believe that the involvement of an entity like WADA will improve our Program in any respect. As discussed above, the NBA's Program is already managed by independent entities and individuals with substantial expertise and integrity. Moreover, because the NBA and the Players Association jointly created our Program, NBA players have confidence in its legitimacy and impartiality, and that trust is critical to making the Program run smoothly.

I thank the Committee for the opportunity to present the NBA's views on this matter.

Mr. RUSH. The next witness is Mr. Hunter, the Basketball Players—NBA Players Association.

STATEMENT OF G. WILLIAM HUNTER, EXECUTIVE DIRECTOR, NATIONAL BASKETBALL PLAYERS ASSOCIATION

Mr. HUNTER. Thank you, Chairman.

Chairman Rush, Congressman Whitfield and members of the committee, I am pleased to be here and to represent the 450 men and 200-plus women of the NBA and WNBA.

I appreciate the subcommittee's concern about the use of steroids by professional athletes and others, particularly young adults and children. As a former State prosecutor and United States Attorney for the Northern District of California, I participated in the prosecution of many drug cases and have a keen sensitivity towards issues involving drug use and abuse. Based on my experiences in the 12 years I have served on behalf of NBA players, I firmly believe that the use of steroid and other performance-enhancing drugs is virtually nonexistent, and I quote, nonexistent in the NBA. Nevertheless, the players and I are committed to ensuring that the use of such drugs does not ever become an issue of concern.

Towards that end, we have put in place a comprehensive drug program and policy that provides the education, testing, and discipline with regard to the use of steroids, performance-enhancing drugs, and masking agents. We were glad to get out in front of this issue when we put the policy in place in 1999, long before it generated the national interest that exists today; and we remain content that our policy, strengthened significantly in 2005, following my last appearance here, sends an appropriate message to the world that there is no place for steroids in professional basketball.

In our 2005 agreement, the players agreed to more frequent testing, harsher penalties for steroid use and performance-enhancing drugs, even though the results of our testing over the prior 6 years did not mandate that such changes be made. I am pleased to report that the test results since the inception of our 2005 agreement confirm our belief that steroid use is not an issue in the NBA.

We have succeeded for a variety of reasons. As soon as a player enters the League as a rookie, he is immediately taught about the dangers of steroid use at our week-long rookie transition program. When he joins his team he must attend mandatory meetings with trained drug counselors, which include retired NBA players and a well-qualified medical director as part of our team awareness programs. Hopefully, the players will become involved with the union; and, if so, will attend our summer and winter union meetings, during which we often give presentations on recent developments and further educate players with these issues. Finally, the medical director maintains a nationwide network of medical providers, at least one in each NBA city, who are available to assist players with counseling and treatment.

Though we hope to accomplish our objectives through education and counseling, we have undoubtedly put in place firm deterrence and a comprehensive testing scheme that effectively end the issue. All NBA players may be tested up to four times per season in random, unannounced tests, selected and performed by an independent agency that is beyond reproach. The test results are analyzed by an independent lab that is also beyond reproach.

In addition to the random tests, players can also be tested if an independent expert determines there is probable cause to believe the player has used prohibited substances. Our prohibited substance list is extremely comprehensive and current, including all steroids made illegal by Congress, plus other steroids, stimulants,

and supplements banned by WADA. The list is updated regularly by our Prohibited Substances Committee, comprised of three independent experts and a representative from both the League and the union.

If a player tests positive or is otherwise adjudged to have used a prohibited substance, he suffers significant penalties. The first-time offender will be suspended for 10 games, with penalties escalating to 25 games for a second offense, 1 year for a third, and finally dismissal and disqualification for a fourth use.

Even a first-time offender suffers greatly. An average NBA player would lose a half million dollars in salary alone if caught just once using steroids. And perhaps more importantly, since the player's identity and the substance used are disclosed publicly, the impact on the player is devastating, costing millions in endorsements and other revenues.

In sum, we believe our program strikes the appropriate balance with regard to issues of testing and discipline, and we certainly have not seen signs that a steroid issue exists in the NBA. Whether we attribute it to the concern with the health risk and side effects or the deterrent effect put in place by our policy or, as I believe is most prominent, the widespread belief among our membership that steroid use would diminish and not enhance their skills as a professional basketball player, it has become clear to me that players in the NBA simply have no desire to use steroids. The players know and through our policy have demonstrated to everyone, especially our young fans, that the only way to succeed as a professional basketball player is by cultivating and nurturing your talent, determination and desire, and by working harder than everyone else.

I am grateful that the committee has allowed us to send this message through the vehicle of our collective bargaining policy. Thank you for this opportunity.

Mr. RUSH. The Chair thanks the witness.

[The prepared statement of Mr. Hunter follows:]

STATEMENT OF G. WILLIAM HUNTER

Mr. Chairman and Members of the Subcommittee:

My name is G. William Hunter and I am the Executive Director of the National Basketball Players Association, the labor union that represents all NBA players in collective bargaining.

I appreciate the Subcommittee's concern about the use of steroids by professional athletes and others, particularly young adults and children. As a former state prosecutor and United States Attorney, I have participated in the prosecution of many drug cases and have a keen sensitivity toward issues involving drug use and abuse. Based on my experiences in the nearly 12 years I have served the NBA players, I firmly believe that the use of steroids and other performance enhancing drugs is virtually non-existent in the NBA. Nonetheless, the players and I are committed to ensuring that the use of such drugs does not ever become an issue of concern.

To that end, in our most recent collective bargaining agreement executed in 2005 shortly after my last appearance here, we greatly strengthened the testing protocol for steroids, masking agents and performance enhancing drugs that was established in our 1999 Agreement. Our Agreement today provides for random testing for all players of up to four (4) times during the NBA season. This testing protocol is a significant change from the prior policy, which provided for random testing of veteran players once during the training camp period.

Additionally, all players remain subject to reasonable cause testing at any time. If an independent expert finds reasonable cause to believe that a player is using steroids the player may be tested up to four (4) times during the following six week

period. The testing during this period may be administered at any time, without any prior notice to the player. All drug testing is conducted by an independent company, with no advance notice given to the players, and all specimens are analyzed by one of only three WADA-accredited laboratories in North America.

Our list of banned substances is extremely comprehensive and current. The list includes all steroids made illegal by Congress plus other steroids, stimulants and supplements banned by WADA. The list is updated regularly by our Prohibited Substances Committee, comprised of three independent drug testing experts and a representative from both the NBPA and NBA.

While our Anti-Drug Program has always had a strong emphasis on education and treatment rather than punishment, with a standard of progressive discipline for violators, the Program does provide for substantial penalties, which were significantly increased in our current agreement, for those who are caught using steroids and other performance enhancing drugs. A first time offender is automatically suspended for ten (10) games and is required to enter an education, treatment and counseling program established by the Program's Medical Director. This suspension alone would cost the average NBA player half a million dollars in salary. For a second violation, the player is suspended for twenty-five (25) games and required to re-enter the education, treatment and counseling program. For a third violation, the player is suspended for one (1) year from the date of the offense and is again required to enter the education, treatment and counseling program. If there is a fourth violation, the player is immediately dismissed and disqualified from the NBA. Also, any player who is disciplined for conduct involving steroids, performance enhancing drugs or masking agents, will have his identity, the particular drug used, and the penalty publicly disclosed. Especially in the current environment, the impact of being identified as a steroid user could be devastating to a player, costing him millions in endorsements and other revenues, and certainly serves as a significant deterrent.

In addition to severe penalties and increased frequency of testing, our Anti-Drug Program is focused on education, treatment and counseling. Players attend mandatory meetings when they first enter the league and then during each NBA season where the dangers of steroid and performance enhancing drug use are discussed with drug counselors. At our regular union meetings, we take the opportunity to further educate the players on these issues. The program's Medical Director supervises a national network of medical professionals, located in every NBA city, available to provide counseling and treatment to players.

Recognizing the increased scrutiny that steroid and other performance enhancing drug use has received in society, and particularly in professional sports, we feel that we have sent a strong and unequivocal message to society in general and our young fans in particular that we do not condone, support or accept the use of steroids and performance enhancing drugs in our sport. Our willingness to significantly increase the frequency of testing that our players undergo, and increase the penalties imposed upon violators evidences the utmost concern that we have for this societal problem. Indeed, our players have been active in various events and programs run by their teams to help spread the word to their communities about the dangers of steroids.

We continue to believe that collective bargaining is the most appropriate forum for the resolution of these issues and are confident that our program addresses in a meaningful way the concerns of the Committee. Congress has long given deference to parties operating under collective bargaining agreements to develop their own solutions to problems, properly recognizing that the parties bound by a collective bargaining agreement have a longstanding relationship with unique problems and problem solving methods that are often difficult to comprehend by those outside the relationship. We fully believe in and support the Committees' and Congress' goal of eliminating the use of steroids and performance enhancing drugs in sports, and we believe this goal is best accomplished by the leagues and players working together to accomplish this universal objective. We think that the players, supported by the leagues, are best able to demonstrate to everyone, especially our young fans, that the only way to become a professional athlete is by cultivating and nurturing their talent, determination, and desire, and by working harder than everyone else.

I want to thank the Committee for the opportunity to appear before you today.

Mr. RUSH. The next witness is the Commissioner of the National Football League, Mr. Roger Goodell.

**STATEMENT OF ROGER GOODELL, COMMISSIONER, NATIONAL
FOOTBALL LEAGUE**

Mr. GOODELL. Chairman Rush, Ranking Member Whitfield, and the members of the subcommittee, my name is Roger Goodell. I am Commissioner of the National Football League, a position I have held for 18 months. I am pleased to testify today and am grateful to you, Mr. Chairman, for moving the date of the hearing so that I could be here today.

We have just completed an outstanding 2007 season, capped by the New York Giants' thrilling Super Bowl win over the New England Patriots, a game viewed by nearly 150 million people in this country. The NFL's popularity did not just happen, and I don't take it for granted. As Commissioner, my most important responsibility is to safeguard the integrity of the game and preserve public confidence in the NFL, particularly for the next generation of fans. That includes having comprehensive and effective programs to keep our game free of steroids and other performance-enhancing drugs.

For the past 15 years, Gene Upshaw and the NFLPA have been our partners in our fight against drugs. We believe that we have been leaders in this effort, and we remain fully committed to continuing our progress.

Our program is founded on a number of key principles, including the following:

Year-round, random, unannounced testing both in season and out. We conduct more than 12,000 tests each year for steroids and other performance-enhancing drugs.

Two, strict liability. Players are responsible for what is in their bodies. The lack of intent or accidental use of a tainted supplement is no excuse.

Comprehensive ban list. We prohibit nearly 90 substances, including steroids, hormones, masking agents and stimulants. The list is regularly updated; and we have often banned substances, such as THG, ephedra and andro before the government or other sports organizations.

Administrative independence. Nobody connected with the NFL, any NFL club or the Players Association has any prior knowledge or ability to influence who is tested and when the tests are given or how the results are reported.

Adherence to the highest analytical standards. All specimens are collected by independent, specially trained collectors, who follow a strict chain of custody and documentation guidelines, and are then analyzed using the best available technology at one of two U.S. labs certified by the World Anti-Doping Agency.

Respect for players' rights. Our appeals system provides due process and confidentiality for players, while resolving appeals in a timely manner.

Mandatory penalties. Any player who violates the program is suspended a minimum of four games, 25 percent of our regular season, without pay and subject to an enhanced testing, up to 24 unannounced times per year, for the balance of his NFL career.

We regularly review our program to identify ways to improve it; and in just the last 2 years we reduced the threshold for positive tests for testosterone greatly, increased our use of highly sensitive carbon isotope ratio testing, increased in-season random testing by

40 percent, increased the penalty for repeat violators, added many new substances to our prohibited list, and tripled the number of times a player may be tested in the off-season.

While the vast majority of the key recommendations of Senator Mitchell's report have long been part of our current program, our annual review will include exploring ways to incorporate additional elements of his findings into our program.

In conjunction with the United States Anti-Doping Agency, we have created a new research and testing lab at the University of Utah, only the second certified testing lab in this country; and we have funded a wide range of research, most recently committing \$3 million to a research consortium led by the U.S. Olympic Committee.

I know the subcommittee shares our concern about human growth hormone, which is now widely and unlawfully available through a variety of sources, including Internet-based pharmacies and so-called anti-aging clinics. It is by no means restricted to athletes. To the contrary, it is used by movie stars, students, and many others.

No urine test has been developed for growth hormone, although the NFL is supporting a variety of research to develop improved testing both by blood and urine. A blood test has been developed, but it has been used in very limited ways.

As Senator Mitchell's report stated, the limitations of the current blood test are such that its, quote, practical utility, is doubtful. There are many reasons for this, including that the existing test is available only in extremely limited quantities, that no lab in the United States is presently certified to perform the test, and because the window of detection is quite limited. This may explain why, to my knowledge, no athlete has ever tested positive for growth hormone in the Olympics or any professional sports league. However, where other information has established the use of growth hormones, the NFL has taken action and suspended players and others for using this substance.

We believe that our collective bargaining program does not reflect a failure to address the issue of performance-enhancing drugs but should instead be recognized as a comprehensive and effective program that has effectively detected and deterred use of these substances in the NFL and kept pace with new developments. We believe the government actions should support and respect collective bargaining solutions that are consistent with public policy and should not displace those solutions. We would be pleased to work with the subcommittee on ways to accomplish this as it continues its examination on the subject.

Once again, thank you for allowing me to appear today; and I look forward to responding to your questions.

Ms. SCHAKOWSKY [presiding.] Thank you.

Before I call on Mr. Upshaw, let me just say that the reason people are cycling in and out is that there is a vote right now, and the chairman made a decision, rather than to recess, because I know all of you have valuable time, that we would just continue. But be sure that your testimony has been read, and I appreciate your continuance.

So, Mr. Upshaw, proceed.

**STATEMENT OF GENE UPSHAW, EXECUTIVE DIRECTOR,
NATIONAL FOOTBALL LEAGUE PLAYERS ASSOCIATION**

Mr. UPSHAW. Thank you, Madam Chair.

My name is Gene Upshaw. I am the Executive Director of the National Football League Players Association, and we are a labor union that represents all NFL players in collective bargaining. The issues before this subcommittee are very important to us, and we are glad that you are holding these hearings.

When Commissioner Tagliabue and I appeared before the subcommittee in the last Congress, our testimony reflected a joint commitment to keep steroids and performance-enhancing substances out of football and all sports. Today, Roger Goodell, the new Commissioner, and I share the same commitment, and our joint statement reflects that.

The Commissioner touched on a lot of issues, but I want to just sum up just a few that I think are important.

Our commitment comes from a number of concerns. First, the use of substances that threaten the fairness of the game and the integrity of the game is very important. That is why we have taken the position that we have taken, and we started that in 1987. Second, we have a responsibility to protect our players from the adverse health effects of performance-enhancing drugs and steroids. Third, we are serious about our role as role models, and we understand that educating the youth is very important to all of us.

The key provisions of our program, the annual tests for all players, plus unannounced tests, we test 10 players per team per week during the season. Players have to take or are eligible to take at least six random tests during the off-season. So we have both in-season testing and out-of-season testing.

We have a comprehensive list of banned substances, and our League and the Players Association meet on a quarterly basis to consider and update any changes that we might have or should discuss in the operation of our program. We are now in the process of rewriting the new policy for 2008. We will provide that revision to the committee when it is completed.

As far as penalties, we have penalties of a four-game suspension for the first offense, an eight-game suspension for the second offense, and up to a year for a third offense. And you also are not cleared—you have to be cleared to come back medically, and you have to remain drug free to return.

As an added provision, you are not eligible to be paid any bonus payments that you might have earned while you were on performance-enhancing drugs. You are not eligible for the Pro Bowl. You are not eligible for any NFL or NFLPA awards.

We have a strict liability for players. There is no excuse for any player that says he was not aware of a banned substance in what he was taking. That is his responsibility. He is responsible for what goes into his body.

We have education of both our players and our teams through programs, literature. We have a toll-free hotline. We have mandatory meetings.

With respect to human growth hormones, we know that there is no reliable urine test available, but the NFL is financially supporting research in trying to develop such a test. As we go forward,

we will continue to be vigilant and support research. And the NFL spends a tremendous amount of money each year on the research and development of new tests.

We are proud of our programs and what it has accomplished. Is it perfect? Does it catch everyone? No. But the players overwhelmingly support the program, recognize its value, and believe it applies to all players, fair and evenhanded.

In that respect, our drug testing program has not been imposed on us. It is something that we decided we needed to do, as I said, back as early as 1987. The players and teams recognized the problem, and reached a consensus that certain substances had to be out of the game.

I believe that the true test of what and how the players support our program is that to date there has never been one player to defend or come to the defense of any player that has tested positive for the use of banned substances. There is no room for cheaters in the game, and our players have continually supported that, and we will continue to monitor and improve our program as we go forward.

I don't believe that Federal legislation is needed. We are trying to address this issue and have addressed this issue through collective bargaining. We will continue to do that. And I think that we have made a strong statement in the past and will continue to do that in the future, because we really believe that there is no room for cheaters in the National Football League or in any sport, and we all ought to address that in our own forums.

I thank you for this opportunity to appear, and I will welcome your questions at the end. Thank you.

Ms. SCHAKOWSKY. Thank you, Mr. Upshaw.

[The prepared statement of Messrs. Goodell and Upshaw follows:]

**TESTIMONY OF ROGER GOODELL
COMMISSIONER,
NATIONAL FOOTBALL LEAGUE,
AND GENE UPSHAW
EXECUTIVE DIRECTOR,
NATIONAL FOOTBALL LEAGUE PLAYERS ASSOCIATION,
BEFORE THE
SUBCOMMITTEE ON CONSUMER PROTECTION
OF THE
COMMITTEE ON ENERGY AND COMMERCE
UNITED STATES HOUSE OF REPRESENTATIVES
FEBRUARY 27, 2008**

Chairman Rush and Members of the Subcommittee:

We are Roger Goodell, Commissioner of the National Football League, and Gene Upshaw, Executive Director of the NFL Players Association. We have submitted this joint statement to emphasize that our organizations – representing the 32 NFL Member Clubs and approximately 1,800 current NFL players – have a shared view that steroids and other performance-enhancing substances have no place in our game, or anywhere in sports. We have been committed to keeping them out of the NFL since the late 1980s and will continue to work together, along with government and private parties, to remove them from American life. It is true that we sometimes confront difficult economic issues in collective bargaining. But on this issue, there is no division between us. Each of us strongly supports the current NFL Program on steroids and other performance-enhancing drugs; each of us is committed to its continued vitality and improvement; and each of us is committed to ensure that it will remain a model for professional and amateur sports.

Summary of NFL Policy

The title of today's hearing – "Drugs in Sports: Compromising the Health of Athletes and Undermining the Integrity of Competition" – sums up the essence of the National Football League's programs and policies to ban the use of steroids and other performance-enhancing substances. The General Statement of the NFL Policy on Anabolic Steroids and Related Substances makes it plain these prohibited substances "have no legitimate place in professional football." (A copy of the 2007 Policy is attached to our testimony.)

The program has been among the highest priorities of the NFL for a number of reasons:

First, these substances threaten the fairness and the integrity of the game on the field. To allow the use of steroids and banned substances would not only condone cheating, but also

compel others to use them to remain competitive. Our own players want to rid the League of these substances so they can compete on a level playing field.

Second, we have a responsibility to protect our players from the demonstrated adverse health effects of steroids and other banned substances. Medical literature is replete with research linking the use of these substances to a wide range of serious health problems.

Third, we take seriously our role in educating and leading young people. The use of performance-enhancing drugs is dangerous and sends the wrong message that there are shortcuts to success and that performance at any price is more important than integrity. We recognize a responsibility to send the right message to young people. High school and college students – both athletes and non-athletes – are using these substances and NFL players by their own conduct should not suggest this is either acceptable or safe.

For many years, the NFL was the only professional sports league to test players for steroids and to impose significant discipline on players who tested positive for these prohibited substances. The testing program was first implemented by Commissioner Pete Rozelle in 1987. Prior to the 1989 season, Commissioner Rozelle took a further step, and publicly announced the suspension of active players who had tested positive for steroids during the preseason.

In 1990, Commissioner Paul Tagliabue took a number of steps to enhance the program. He initiated random, unannounced testing for all players throughout the year; retained Dr. John Lombardo as the League's independent Advisor on Anabolic Steroids (a position Dr. Lombardo continues to hold today); recruited other prominent scientists to advise the League in developing its program; and directed that all testing for steroids be conducted at laboratories certified by the International Olympic Committee. Players testing positive would be suspended without pay for a minimum of 30 days or four regular season games (25% of the season) for a first offense.

Since 1993, the NFL and the NFL Players Association have jointly administered the program through the collective bargaining process, and the program has benefited from the strong support the Union's leadership has given to eliminating these substances from the game. Each of the key elements of the policy has been endorsed through collective bargaining, and we have worked together to administer the program in a fair and effective way.

Key Elements of NFL Policy

Our program is founded on a number of key principles, including the following:

1. **Year-round, random, unannounced testing – in season and out.** This testing takes the following form:
 - A. Annual/Preseason – All players are tested at least once each year. This test occurs during training camps or in mini-camps prior to the season. In addition, players are subject to random tests during each week of the preseason.
 - B. Regular Season – Ten players on each team per week are randomly selected for testing. These tests are conducted on different days of the week, and scheduled in a way to identify both substances that would be taken on a game day (such as stimulants) and substances that can be detected for a longer period of time, such as more traditional steroids. Players are randomly selected for testing via a computer program. There is no limit on the number of times a player may be randomly selected for testing. This testing continues for teams that qualify for the playoffs.
 - C. Off-Season – Each player is subject to as many as six off-season tests. Players are required to give their off-season locations to the Medical Advisor so that they can be located and tested, again on a random and unannounced basis.
 - D. Reasonable Cause – A player may be placed on reasonable cause testing, which subjects him to as many as 24 tests per year for the balance of his NFL career. Players are subject to reasonable cause testing based on prior positive tests (including while in college), or based on other documented involvement with prohibited substances.

On a combined basis, the NFL conducts approximately 12,000 random, unannounced tests each year. This is far more testing than is conducted in any other amateur or professional sport or competition including the Olympic Games.

2. **Strict Liability** – A central principle of our program is that players are responsible for what is in their bodies. Lack of intent, inadvertence, or accidental use of a tainted supplement is no excuse.
3. **Comprehensive List of Banned Substances** – The NFL prohibits nearly 90 substances including steroids, precursors, growth hormones, masking agents and stimulants. It is tailored to our NFL athlete population, is regularly reviewed by the NFL and the NFL Players Association, and has been revised and expanded over the years. In addition, the banned substance list includes a general prohibition of “related substances,” so that minor chemical alternatives cannot excuse the use of what would otherwise be a prohibited substance.

As a result, our Program is often ahead of both government and other sports organizations. Examples include androstenedione, ephedra, and THG, all of which were banned by the NFL well before they were prohibited by other sports organizations or the federal government. In addition, we meet regularly with leading scientists and pay close attention to developments in other anti-doping programs to ensure that our list remains both current and comprehensive.

4. **Administrative Independence** – Dr. John Lombardo serves as the independent Medical Advisor and has held that position since 1990. Under the program, Dr. Lombardo has full authority to supervise all aspects of testing, including the following:

- selecting which players will be tested each week (using a randomized computer draw in the case of the regular 10-per-team-per-week tests);
- deciding when the specimens will be collected;
- determining the number of reasonable cause tests to be administered (subject to the collectively-bargained maximum of 24 tests per player per year);
- determining the number of off-season tests to be administered (subject to the collectively-bargained maximum of six off-season tests per player);
- analyzing test results over time, particularly with respect to naturally-occurring substances such as testosterone;
- performing any medical evaluations associated with possible use of prohibited substances, so-called “therapeutic use exemptions,” and reinstatement following a suspension;
- communicating with, giving instructions to, and overseeing the work of the independent specimen collection firm;
- deciding whether a player has failed to cooperate with testing, or attempted to dilute, tamper with, or substitute a specimen to defeat testing, or otherwise violated testing protocols; and
- certifying a positive test for disciplinary action

Neither the NFL, the NFLPA, nor any NFL Member Club directs, has prior knowledge of, or influences in any way the testing schedule, the identity of players who are tested, or the initial determination whether a violation has occurred, either as a result of a positive test or for some other reason.

The NFL and NFLPA do not become involved in the process until a positive test or other violation has been determined by Dr. Lombardo, at which point disciplinary consequences will follow, subject to the player's right to appeal.

5. **Adherence to strict collection and analytical standards** – Specimens are collected by independent, specially-trained collectors who work for an independent company, not for the NFL or NFLPA. All specimen collection is performed under strict rules, the most important of which is the requirement of direct frontal observation, a step which gives substantial assurance of the authenticity and genuineness of the sample. The collectors ensure accurate completion of change-of-custody documentation, and package and ship specimens to the testing lab, using tamper-resistant seals and unique control identification numbers. The chain-of-custody documents conform to standards developed and used by the federal government, WADA, and other organizations. The validity of the documentation is independently confirmed at the testing lab when the samples are received.

All specimens are analyzed at either the UCLA Olympic Analytical Laboratory in Los Angeles or the Sports Medicine Research and Testing Laboratory ("SMRTL") at the University of Utah. These labs are certified by both the International Standards Organization and the World Anti-Doping Agency. They are also subject to independent blind quality control checks under the direction of Dr. Bryan Finkle, a certified toxicologist jointly retained by the NFL and NFL Players Association.

The SMRTL was developed by the NFL in partnership with the United States Anti-Doping Agency and the University of Utah. Over and above testing costs, the NFL has to date invested approximately \$3 million to establish and equip this lab, retain and train personnel, and meet international standards. Consistent with its mission, the SMRTL will

perform testing not only for the NFL, USADA and WADA, but for the NCAA and other sports organizations as well.

Every specimen is screened for all banned substances that can be identified in urine. The analysis is performed by highly sophisticated GC/MS and LC/MS/MS equipment. Where issues arise concerning potentially elevated levels of testosterone or epi-testosterone, the labs employ a highly sensitive technique called Carbon Isotope Ratio testing which can conclusively identify exogenous testosterone. In addition, a percentage of specimens is randomly screened using CIR technology to identify and deter testosterone use.

The testing laboratories do not know which players have been tested or who provided any specific specimen being analyzed. Accordingly, the analysis of specimens cannot be affected by that information.

6. **Respect for Player Rights** –Through collective bargaining we have designed an appeal system that provides due process and confidentiality for players and resolves appeals in a timely way.
7. **Mandatory Penalties** –Any player who tests positive is suspended without pay for a minimum of four games, subject to the right of appeal. He thus loses one-fourth of his salary. A player who has a second positive test is suspended without pay for a minimum of eight games. A third positive test results in a suspension without pay of at least one year.

The penalties for an established violation are mandatory and may not be reduced or modified on appeal. No consideration of intent is necessary and a lack of intent cannot be cited as a mitigating factor.

The mandatory penalties, combined with frequent, on-going testing of violators, have effectively deterred any repeat use. Over the history of the policy, three players have tested

positive and been disciplined a second time; two of those players elected to retire rather than face a second suspension.

Discipline can also be imposed in the absence of a positive test. For example, in 2007, three players and a coach were suspended as a result of law enforcement activity that established their use of a prohibited substance. The NFL cooperated fully with law enforcement officials in their investigation.

In addition, a failure or refusal to test; an effort to dilute, substitute, or tamper with a urine specimen; or otherwise manipulate a test result will result in disciplinary action.

* * *

One other key element of our program is that we regularly review its operation and make appropriate modifications. In recent years, for example, we have reduced the threshold for a positive test for testosterone; greatly increased our use of highly sensitive Carbon Isotope Ratio testing; increased in-season random testing by 40%; increased the penalty for repeat violators; added many new substances to our prohibited list; tripled the number of times a player may be tested in the off-season; and have agreed to special procedures under which anyone who enters the NFL with a prior suspension from another sports organization will be treated as a repeat offender in our Program. And we have funded a wide range of research, including on improved testing methods for substances such as human growth hormone.

We have also initiated constructive dialogue with law enforcement at all levels, and we applaud the outstanding work of federal and state prosecutors in breaking up illegal steroid and growth hormone distribution rings. We have also instituted a comprehensive program of education for players and teams through literature, videos, a toll-free hotline, and mandatory meetings.

* * *

We will now comment on two points that we know are of particular concern to the Committee: the status of testing for human growth hormone; and our views on possible federal legislation.

Testing for Human Growth Hormone

Human growth hormone is a naturally occurring substance that is found in all healthy individuals. It is now widely -- and unlawfully -- available through a variety of sources, including Internet-based pharmacies and so-called "anti-aging" clinics. Its use is by no means restricted to athletes. To the contrary, it is used by movie stars, students, and many others. In short, the issue of growth hormone is one that extends far beyond sports.

No reliable urine test has been developed for growth hormone, although research is underway to develop such a test, and the NFL has contributed funds to support that research. A blood test has been developed, and has been used in very limited ways. The new head of WADA said last week, "There's been progress on the test for HGH and we're hoping that it is ready soon." And, as Senator George Mitchell stated in his recent report, the limitations of the current blood test are such that "its practical utility is doubtful." There are many reasons for this, including that the existing test is available only in extremely limited quantities, that no lab in the United States is presently certified to conduct growth hormone testing, and, importantly, that the window of detection is so brief that the ability to identify growth hormone is severely limited. These factors may explain why no athlete in any sport or competition has ever tested positive for growth hormone. However, when other information has established the use of growth hormones, the NFL has taken disciplinary action.

We have, in conjunction with the United States Olympic Committee, Major League Baseball, and the USADA, joined a newly-established research consortium which will support further research into improved testing methods. The NFL has pledged \$3 million in support of this effort. We have been giving this subject the most careful consideration, and if and when a scientifically-validated test becomes available on a widespread basis, we will discuss how to incorporate such a test into our program. In the meantime, we will continue to support research and law enforcement efforts to address this important issue. As part of this support, we have endorsed legislation that would amend the Controlled Substances Act by adding human growth hormone to the list of "Schedule III Substances."

Is Federal Legislation Necessary?

The NFL and the NFLPA are proud of our testing and discipline program and how it is operating. Is it perfect? Does it catch every offender? Probably not. But the players overwhelmingly support the program, recognize its value, and believe it applies to all players in a fair and even-handed way.

A collectively-bargained program offers significant advantages. Most importantly, it ensures that the program has the support of the very people who are being tested and disciplined, and that it operates in a manner that is fair and uniform, without regard to whether the player is a future Hall of Famer or a journeyman hoping for one more season. It allows for a rapid response to changing conditions -- it is no accident that our collectively-bargained program banned androstenedione and ephedra long before the federal government, or that we were able to retest every specimen in the laboratory's possession (more than 2,000) when the designer steroid THG was first identified. It avoids legal issues that might otherwise limit the effectiveness of a drug testing program. A management-labor agreement allows for reasonable limits on individual

privacy and other rights, and for an appeals process that protects player confidentiality and due process rights, while also deciding appeals in a timely way.

When the FDA banned ephedra, the effect of the ban was sharply limited by a federal judge. When the NFL and NFLPA agreed to ban ephedra, it stayed banned. While Congress may limit FDA's authority to regulate nutritional supplements, we were able to agree on a simple rule – you are responsible for what is in your body, and it is of no consequence if you accidentally ingested a tainted supplement.

Accordingly, we do not believe that there is a demonstrated need for federal legislation to supersede our collectively-bargained Policy. The bargaining process appears to be the most suitable means for dealing with the issue. We recognize that use of steroids and related substances presents an important public health issue and believe that government has an important and constructive role to play. That role includes law enforcement activity, support for research and education programs, and oversight of private industry programs. Where private industry has failed to address a problem, or has done so in a demonstrably ineffective way, legislation can both encourage and support appropriate private action; or at times displace private action altogether.

If the Subcommittee should elect to consider possible legislative approaches, our organizations are fully prepared to consult with you and your staff on the scope and content of legislation. If legislation is to be pursued, we believe that it should embrace and not supplant effective collectively-bargained approaches. Consistent with that belief, we would offer the following general principles to guide the development of any federal legislation.

First, Congress should encourage private-sector initiatives and solutions that meet its public policy objectives in addressing the issue of performance-enhancing drugs in professional sports, and any legislation should be reserved for circumstances in which Congress's public policy needs have not been met by these private-sector initiatives.

Second, legislation should recognize and respect the longstanding national policy favoring collective bargaining and should build upon the successes of collectively-bargained programs rather than discard them and substitute other administrative frameworks.

Third, collectively-bargained solutions that meet the public policy purposes set forth by Congress should not be replaced with federal regulations. A federal regulatory process will foster court and administrative challenges; and such challenges will likely weaken the effectiveness and increase the administrative complexity of any program.

Fourth, penalties and appeals should be sufficient to deter use; sanction violators appropriately; avoid extended litigation; and send an appropriate message to fans and young people. Strict liability and escalating sanctions with limited grounds for appeal are superior to draconian penalties for first offenses with discretionary exemptions and extended rights of appeal.

Fifth, legislation should recognize and account for the differences among sports in establishing testing protocols and adjudicatory and appeal policies, among other matters. In developing a list of banned substances, legislation should take into account those substances currently banned by professional sports associations in addition to other scientifically valid lists. It should not prohibit collectively-bargained arrangements to expand the list of banned substances.

Finally, legislation should provide that a professional sports association is in compliance with federal standards when through collective bargaining it has adopted and implemented a testing program for steroids, other performance-enhancing substances and masking agents that meets or exceeds the federal requirements.

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In summary, Mr. Chairman, we modestly believe that our organizations have been leaders in the fight against steroids and performance-enhancing drugs, and our Program – while certainly not perfect – has been a model for others and can be built upon to achieve further successes.

Once again, thank you for inviting us to appear today. We look forward to responding to your questions.



NFL PLAYERS
ASSOCIATION

NATIONAL FOOTBALL LEAGUE

POLICY ON ANABOLIC STEROIDS AND RELATED SUBSTANCES 2007

**as Agreed by the National Football League Players
Association and the National Football League Management
Council in the NFL Collective Bargaining Agreement,
as Amended**

June 21, 2007

(6.21.07)

**NATIONAL FOOTBALL LEAGUE POLICY
ON ANABOLIC STEROIDS AND RELATED SUBSTANCES**

TABLE OF CONTENTS

	Pages
1. General Statement of Policy	1
2. Administration of the Policy	2
3. Testing for Prohibited Substances	3
A. Types of Testing	3
B. Testing Procedures	4
C. Failure or Refusal to Test/Efforts to Manipulate Specimen or Test Result	5
D. Testing Laboratories	5
E. Unknowning Administration of Prohibited Substances	5
4. Procedures in Response to Positive Tests or Other Evaluation	6
A. Notification	6
B. Re-Test of Split Sample	6
C. Medical Evaluation	6
5. Discipline for Violation of Law	7
6. Suspension and Related Discipline	7
7. Procedures Regarding Testosterone	9
8. Masking Agents and Supplements.....	9
9. Examination in Connection with Reinstatement	10
10. Appeal Rights	10
11. Burdens and Standards of Proof; Discovery	10
12. Reasonable Cause Testing	11
13. Confidentiality	11
A. Scope	11
B. Discipline for Breach of Confidentiality	11
14. Bonus Forfeiture	12
15. Eligibility of Persons Suspended by Other Organizations	12
Appendix A - List of Prohibited Substances	13
Appendix B - Personnel	17
Appendix C - Collection Procedures	18
Appendix D - Procedures Following Positive or Presumptively Positive Tests	19
Appendix E - Positive Test Medical Evaluation	21
Appendix F - Supplements	22
Appendix G - Letter from NFL Advisor on the Supplement Act	23
Appendix H - Letter from U.S. Department of Justice, Drug Enforcement Administration	24
Appendix I - Standard Form of Documentation Package.....	25
Appendix J - Bonus Forfeiture	26

**NATIONAL FOOTBALL LEAGUE POLICY
ON ANABOLIC STEROIDS AND RELATED SUBSTANCES**

1. General Statement of Policy

The National Football League prohibits the use by NFL players of anabolic/androgenic steroids (including exogenous testosterone), certain stimulants, human or animal growth hormones, whether natural or synthetic, and related or similar substances. (See Appendix A). For convenience, these substances, as well as masking agents or diuretics used to hide their presence, will be referred to as "Prohibited Substances".¹ These substances have no legitimate place in professional football. This policy specifically means that:

- **PLAYERS** may not, under any circumstances, have Prohibited Substances in their systems.
- **COACHES, TRAINERS, OR OTHER CLUB PERSONNEL** may not condone, encourage, supply, or otherwise facilitate in any way the use of Prohibited Substances.
- **TEAM PHYSICIANS** may not prescribe, supply, or otherwise facilitate a player's use of Prohibited Substances.
- **ALL PERSONS**, including players, are subject to discipline by the Commissioner for violation of this Policy or of laws relating to possession and/or distribution of Prohibited Substances, or conspiracy to do so.

The League's concern with the use of Prohibited Substances is based on three primary factors. First, these substances threaten the fairness and integrity of the athletic competition on the playing field. Players use steroids for the purpose of becoming bigger, stronger, and faster than they otherwise would be. As a result, steroids and related

¹ An illustrative list of Prohibited Substances (see Appendix A) is attached to this Policy. Please note that, in addition to the substances specifically named, other categories and related substances can also violate the Policy.

substances threaten to distort the results of games and League standings. Moreover, players who do not wish to use these substances may feel forced to do so in order to compete effectively with those who do. This is obviously unfair to those players and provides sufficient reason to prohibit their use.

Second, the League is concerned with the adverse health effects of steroid use. Although research is continuing, steroid use has been linked to a number of physiological, psychological, orthopedic, reproductive, and other serious health problems.

Third, the use of Prohibited Substances by NFL players sends the wrong message to young people who may be tempted to use them. High school and college students are using these substances with increasing frequency, and NFL players should not by their own conduct suggest that such use is either acceptable or safe, whether in the context of sports or otherwise.

The NFL Player Contract specifically prohibits the use of drugs in an effort to alter or enhance performance. The NFL Player Contract and the League's Constitution and Bylaws require each player to avoid conduct detrimental to the NFL and professional football or to public confidence in the game or its players. Steroid use violates both these provisions. In addition, the Commissioner is authorized to protect the integrity of and public confidence in the game. This authorization includes the authority to forbid use of the substances prohibited by this Policy.

2. Administration of the Policy

As agreed in the 1993 Collective Bargaining Agreement, the program is conducted under the auspices of the NFL Management Council. The program will be directed by the NFL Advisor on Anabolic Steroids and Related Substances ("Advisor"). The Advisor shall have the sole discretion to make determinations regarding steroid-related matters, including medical evaluations and testing. He will also make himself available for consultation with players and team physicians; oversee the development of educational materials; participate in research on steroids; confer with the Consulting Toxicologist;²

² The Consulting Toxicologist on Anabolic Steroids and Related Substances ("Consulting Toxicologist") will consult on testing procedures and results, laboratory quality, and other issues referred to him by the Advisor. For more information, see Appendix B ("Personnel").

and serve on the League's Advisory Committee on Anabolic Steroids and Related Substances.³

3. Testing for Prohibited Substances

A. Types of Testing

All testing of NFL players for Prohibited Substances, including any pre-employment testing, is to be conducted pursuant to this Policy. All urine samples will be collected by an authorized specimen collector and tested at the appropriate laboratory (see Section 3D below). As is the case in the employment setting, players testing positive in a pre-employment setting will be subject to medical evaluation and clinical monitoring as set forth in Sections 3A, 4C and 12, and to the disciplinary steps outlined in Section 6.

Testing will take place under the following circumstances:

Pre-Employment: Pre-employment tests may be administered to free agent players (whether rookies or veterans). In addition, the League will conduct tests at its annual timing and testing sessions for draft-eligible football players.

Annual/Preseason: All players will be tested for Prohibited Substances at least once per League Year. Such testing will occur at training camp or whenever the player reports thereafter, and will be deemed a part of his preseason physical. In addition, random testing will be conducted during the weeks in which preseason games are played.

Regular Season: Each week during the regular season, ten (10) players on every team will be tested. By means of a computer program, the Advisor will randomly select the players to be tested from the club's active roster, practice squad list, and reserve list who are not otherwise subject to ongoing reasonable cause testing for steroids. The number of players selected for testing will be determined in advance on a uniform basis. Players will be required to test whenever they are selected,

³ The Advisory Committee on Anabolic Steroids and Related Substances is appointed by the Commissioner and chaired by the Advisor.

without regard to the number of times they have previously been tested.

Postseason: Ten (10) players on every team qualifying for the playoffs will be tested periodically so long as their club remains active in the postseason. Players to be tested during the postseason will be selected on the same basis as during the regular season.

Off-Season: Players under contract who are not otherwise subject to reasonable cause testing may be tested during the off-season months up to 6 times at the discretion of the Advisor. Players to be tested in the off-season will be selected on the same basis as during the regular season, irrespective of their off-season location. Any player selected for testing during the off-season will be required to furnish a urine specimen at a convenient location acceptable to the Advisor. Only players who advise in writing that they have retired from the NFL will be removed from the pool of players who may be tested. If, however, a player thereafter signs a contract with a club, he will be placed back in the testing pool.

Reasonable Cause Testing For Players With Prior Positive Tests Or Under Other Circumstances: Any player testing positive for a Prohibited Substance, including players testing positive in college or at a scouting combine session, or with otherwise documented prior steroid involvement, will be subject to ongoing reasonable cause testing at a frequency determined by the Advisor. Such players will be subject to ongoing reasonable cause testing both in-season and during the off-season. Reasonable cause testing may also be required when, in the opinion of the Advisor, available information provides a reasonable basis to conclude that a player may have violated the Policy or may have a medical condition that warrants further monitoring. (See Section 12.)

B. Testing Procedures

In-season tests will ordinarily be conducted on two days each week, and each player to be tested will be notified on the day of the test. On the day of his test, the player will furnish a urine specimen to a DPA who will be present at the team facility.

To prevent evasive techniques, all specimens will be collected under observation by an authorized specimen collector. Specimens will be shipped in collection bottles with

tamper-resistant seals. Each bottle will be identified by a control identification number, not by the player's name. The player will be given an opportunity to witness the procedure and to sign the chain-of-custody form. For more detailed information, see Appendix C ("Collection Procedures").

C. Failure or Refusal to Test/Efforts to Manipulate Specimen or Test Result

An unexcused failure or refusal to appear for required testing, or to cooperate fully in the testing or evaluation process, will warrant disciplinary action. Any effort to substitute, dilute or adulterate a specimen, or to manipulate a test result to evade detection will be considered a violation of the Policy and likely will result in more severe discipline than would have been imposed for a positive test.

D. Testing Laboratories

The Advisor will determine the most appropriate laboratory or laboratories to perform testing under the Policy. Currently, the UCLA Olympic Analytical Laboratory in Los Angeles and the Sports Medicine Research and Testing Laboratory in Salt Lake City have been approved to analyze specimens collected for Prohibited Substances in a player's urine. These laboratories have been accredited by ISO and the World Anti-Doping Association for anti-doping analysis and testing for the NCAA, the United States Anti-Doping Agency and other sports organizations.

Screening and confirmatory tests will be done on state-of-the-art equipment and will principally involve use of GC/MS or LC/MS equipment. In addition, testing will be done for masking agents (including diuretics) as appropriate.

E. Unknowing Administration of Prohibited Substances

Players are responsible for what is in their bodies, and a positive test result will not be excused because a player was unaware that he was taking a Prohibited Substance. If you have questions or concerns about a particular dietary supplement or other product, you should contact Dr. John Lombardo at (614) 442-0106. As the NFL Advisor on Anabolic

Steroids and Related Substances, Dr. Lombardo is authorized to respond to players' questions regarding specific supplements. **Having your Club's medical or training staff approve a supplement will not excuse a positive test result.**

4. Procedures In Response to Positive Tests or Other Evaluation

(See Appendix D for a full outline of procedures normally followed after a positive test result.)

A. Notification

Once a positive result is confirmed, the Advisor will notify the player and the League Office.

B. Re-Test of Split Sample

Unless waived, any player testing positive from the first or "A" bottle will be afforded a test of the other portion of his specimen from the second or "B" bottle.

The player may not be present for the "B" test; however, except for pre-employment tests, at the player's request and expense the "B" test may be observed by a qualified toxicologist not affiliated with a commercial laboratory. The "B" test will be performed at the same laboratory that did the original test according to the procedures used for the original test and by a technician other than the one performing the original confirmation test on the "A" bottle. The player will be notified of the results in writing as soon as practicable.

C. Medical Evaluation

A medical examination such as outlined in Appendix E may be required of any player who tests positive. The Advisor will arrange for the evaluation, and the results of this evaluation will be reported to the player, the Advisor, and the team physician. If medical treatment (including counseling or psychological treatment) is deemed appropriate, it will be offered to the player. Players with a confirmed positive test result will also be placed on reasonable cause testing at a frequency to be determined by the Advisor.

The player is responsible for seeing that he complies with the arrangements of the Advisor for an evaluation as soon as practicable after notification of a positive test. This

requirement is in effect throughout the year.

5. Discipline for Violation of Law

Players or other persons within the NFL who: are convicted of or otherwise admit to a violation of law (including within the context of a diversionary program, deferred adjudication, disposition of supervision, or similar arrangement) relating to use, possession, acquisition, sale, or distribution of steroids, growth hormones, stimulants or related substances, or conspiring to do so; or are found through sufficient credible evidence (*e.g.*, authenticated medical or pharmacy records indicating receipt or use of banned substances; corroborated law enforcement reports) to have used, possessed or distributed performance-enhancing substances, are subject to discipline by the Commissioner, including suspension or, if appropriate, termination of the individual's affiliation with an NFL Club. Any suspension shall be without pay and served as set forth below. Longer suspensions may be imposed for repeat offenders. In addition, players violating this Policy by a violation of law will be appropriately placed or advanced within the three-step program. In this respect, players are reminded of federal legislation which criminalizes possession and distribution of steroids. (See Appendix H.)

6. Suspension and Related Discipline

Players with a confirmed positive test result will be subject to discipline by the Commissioner as outlined in the Policy below.

Step One:

The first time a player violates this Policy by testing positive; attempting to substitute, dilute or adulterate a specimen; manipulating a test result; or by violation of law (see Section 5), he will be suspended without pay for a minimum of four regular and/or postseason games. The suspension will begin on the date set in the League's notification to the player of his suspension, subject to any appeal (see Section 10). If fewer than four games remain in the season, including any postseason games for which the Club qualifies, the suspension will carry over to the next regular season, until a total of four regular and/or postseason games have been missed.

If the imposition of a player's suspension occurs prior to or during the preseason, the player

will be permitted to engage in all preseason activities. Upon the posting of final rosters, however, he will be suspended for four regular season games.

In addition, the player will be subject to evaluation and counseling if, in the opinion of the Advisor, such assistance is warranted.

Step Two:

The second time a player violates this Policy by testing positive; attempting to substitute, dilute or adulterate a specimen; manipulating a test result; or by violation of law (see Section 5), he will be suspended without pay for a minimum of eight regular and/or postseason games. The suspension will begin on the date set in the League's notification to the player of his suspension, subject to any appeal (see Section 10). If there are fewer than eight regular and/or postseason games remaining in the season, including any postseason games for which the Club qualifies, the suspension will continue into the next regular season until a total of eight regular and/or postseason games have been missed.

Step Three:

The third time a player violates the Policy by testing positive; attempting to substitute, dilute or adulterate a specimen; manipulating a test result; or by violation of law (see Section 5), he will be suspended without pay for a period of at least 12 months, subject to any appeal (see Section 10). Such a player may petition the Commissioner for reinstatement after 12 months. Reinstatement, and any terms and conditions thereof, shall be matters solely within the Commissioner's sound discretion.

Players who are suspended under this Policy will be placed on the Reserve/Commissioner Suspension list. During the period that he is on Reserve/Commissioner Suspension, the player will not be paid, nor may he participate in team activities, use the Club's facilities or have contact with any Club officials except to arrange off-site medical treatment. Before a player is reinstated following a suspension, he must test negative for all Prohibited Substances under this policy and must be approved as fit for play by his team physician.

In addition to the suspension imposed on him, any player suspended for a violation of the Policy will be ineligible for selection to the Pro Bowl, or to receive any other honors or awards from the League or the NFL Players Association, for the season in which the

violation is upheld (*i.e.*, following any appeals) and in which the suspension is served.

7. Procedures Regarding Testosterone

The Advisor is authorized to subject a percentage of all specimens to Carbon Isotope Ratio (CIR) testing to detect the use of exogenous testosterone.

If the introduction of testosterone or the use or manipulation of any other substance results in increasing the ratio of the total concentration of testosterone to that of epitestosterone in the urine to greater than 4:1, the test will be considered presumptively positive. Tests showing a ratio greater than 10:1 will be considered conclusively positive. Notwithstanding, when information available to the Advisor suggests but is not conclusive of testosterone use, the Advisor may require the player to submit to ongoing reasonable cause testing and shall order other medical procedures including Carbon Isotope Ratio Testing or other diagnostic tests to confirm whether exogenous testosterone has been used in violation of the Policy. In addition, the Advisor will be entitled to review any available past and/or current medical or testing records.

In addition, the use of epitestosterone to lower a player's T:E ratio is prohibited. When such use is detected or reasonably suspected by the Advisor, additional diagnostic tests may be required if the Advisor deems it necessary. If a player's epitestosterone level exceeds 300 ng/mL, it will be considered a positive test result regardless of the player's T:E ratio.

If on the basis of such follow-up tests, records, prior or subsequent test results, discussions with the player, or other studies, the Advisor subsequently concludes that the test results do in fact reflect the player's use of steroids, the player will be subject to discipline according to the terms of the Policy. Such discipline may be imposed within the season of the year in which the positive test occurred, or, if the Advisor prescribes follow-up measures that entail delay in the final determination, in a subsequent season.

8. Masking Agents and Supplements

The use of so-called "blocking" or "masking" agents is prohibited by this Policy. These include diuretics or water pills, which have been used in the past by some players to reach an assigned weight.

In addition, a positive test will not be excused because it results from the use of a dietary supplement, rather than from the direct use of steroids. Players are responsible for what is in their bodies. For more information concerning dietary supplements, see Appendix F.

9. Examination in Connection with Reinstatement

Prior to reinstatement from any suspension imposed under this Policy, a player must be examined by the team physician before he may participate in contact drills or in a game.

10. Appeal Rights

As is more fully outlined in Appendix D, any player who is notified by the League Office that he is subject to discipline for a violation of this Policy is entitled to an appeal.

The League will designate a time and place for a hearing, at which either the Commissioner or his designee will preside. The player may be accompanied by counsel and may present relevant evidence or testimony in support of his appeal. Additionally, the NFL Players Association may attend and participate notwithstanding the player's use of other representation.

After the record has been closed, the Commissioner or his designee will issue a written decision, which will constitute a full, final, and complete disposition of the appeal and which will be binding on all parties. (If appropriate, a summary ruling may be issued followed by a formal written decision as time permits.) Pending completion of this appeal, the suspension or other discipline will not take effect.

11. Burdens and Standards of Proof; Discovery

Upon appeal of a positive test result, the League shall have the initial burden to establish a prima facie violation of the Policy, and the specimen collectors, Advisor, Consulting Toxicologist and testing laboratories will be presumed to have collected and analyzed the player's specimen in accordance with the Policy. The player may, however, rebut that presumption by establishing that a departure from the Policy's stated protocols occurred during the processing of his specimen. In such case, the League shall have the burden of establishing that the departure did not materially affect the validity of the positive test or

other violation.

In presenting an appeal under this Policy, the player shall be entitled to access to only the information upon which the disciplinary action was based; in no event shall a player have access to records, reports or other information concerning the application of this Policy to any other player. Notwithstanding, this provision does not limit the Players Association's access to appropriate information concerning all violations under this Policy.

12. Reasonable Cause Testing

Reasonable cause testing procedures are more fully outlined in Section 3A of the Policy.

No Club may require any player to submit to reasonable cause testing without the agreement of both the team physician and the Advisor.

In addition, players on reasonable cause testing may be removed from their Club's active roster and placed in the category of Reserve/Non-Football Illness if, after consultation with the team physician, it is the Advisor's opinion that such a step is medically necessary.

13. Confidentiality

A. Scope

The confidentiality of players' medical conditions and test results will be protected to the maximum extent possible, recognizing that players who are disciplined for violating this Policy will come to the attention of and be reported to the public and the media.

B. Discipline for Breach of Confidentiality

Any Club or Club employee that publicly divulges, directly or indirectly, information concerning positive drug tests or other violations of this Policy (including numerical summaries or specific names of persons) or otherwise breaches the confidentiality provisions of this Policy is subject to a fine of up to \$500,000 by the Commissioner.

14. Bonus Forfeiture

The computation of the amount a player must forfeit and return to his Club as a result of violating this Policy is set forth in Appendix J of the Policy.

15. Eligibility of Persons Suspended by Other Organizations

Any person who has been suspended from competition by a recognized sports testing organization based on: (a) a positive test result reported by a World Anti-Doping Agency accredited laboratory for a substance banned under this Policy; (b) an effort to substitute, manipulate or otherwise fail to cooperate fully with testing; or (c) a violation of law or admission involving the use of steroids or other performance-enhancing substances, shall be permitted to enter into an NFL Player Contract or Practice Contract. Such person, however, will be placed on reasonable cause testing and will be immediately advanced to Step Two of the Policy subject to a minimum eight-game suspension upon subsequent violation.

APPENDIX A

List of Prohibited Substances

The following substances and methods are prohibited by the National Football League:

I. ANABOLIC AGENTS

A. ANABOLIC/ANDROGENIC STEROIDS:

<u>Generic Name</u>	<u>Brand Names (Examples)</u>
Androstenediol	Androsterm
Androstenedione	Androstan, Androtex
1-Androstenedione	---
Bolasterone	Myagen
Boldenone	Equipoise, Parenabol
Calusterone	---
Clostebol	Turinabol, Steranabol
Danazol	Cyclomen, Danatrol
Dehydrochloromethyltestosterone	Oral-Turinabol
Dehydroepiandrosterone	DHEA
Desoxymethyltestosterone	DMT, Madol
Dihydrotestosterone	DHT, Stanolone
Dromostanolone	Drolban
Ethylestrenol	Maxibolin, Orabolin
Fluoxymesterone	Halotestin
Formebolone	Esiclone, Hubernol
Furazabol	Miotolon
Gestrinone	Tridomose
17-Hydroxypregnenedione	---
17-Hydroxyprogesterone	---
Hydroxytestosterone	---
Mestanolone	---
Mesterolone	Proviron
Methandienone	Danabol, Dianabol
Methandriol	Androdiol
Methandrostenolone	Dianabol
Methenolone	Primobolan
Methyltestosterone	Metandren
Mibolerone	Testorex
19-Norandrostenediol	19-Diol

I. Anabolic/Androgenic Steroids (cont'd)

<u>Generic Name</u>	<u>Brand Names (Examples)</u>
19-Norandrostenedione	19 Nora Force
Norbolethone	Genabol
Norclostebol	---
Norethandrolone	Nilevar
Normethandrolone	---
19-Nortestosterone (Nandrolone)	Deca-Durabolin
Oxandrolone	Anavar, Lonovar
6-Oxoandrosterone	6-Oxo
Oxymesterone	Oranabol
Oxymetholone	Anadrol
Progesterone	---
Stanozolol	Stromba, Winstrol
Stenbolone	---
Testosterone	Andronate
1-Testosterone	---
Tetrahydrogestrinone	THG
Trenbolone	Finaject

and related substances

B. HORMONES:

<u>Generic Name</u>	<u>Brand Names (Examples)</u>
Human Growth Hormone (hGH)	Saizen, Humatrope, Nutropin AQ
Animal Growth Hormones	---
Human Chorionic Gonadotropin (hCG)	Novarel, Menotropins
Insulin Growth Factor (IGF-1)	---
Erythropoietin (EPO)	---

and related substances

C. BETA-2-AGONISTS (Clenbuterol, etc.)

D. ANTI-ESTROGENIC AGENTS (Clomiphene [Clomid], Cyclofenil, Tamoxifen)

II. MASKING AGENTS

A. DIURETICS

<u>Generic Name</u>	<u>Brand Names (Examples)</u>
Acetazolamide	Amilco
Amiloride	Midamor
Bendroflumethiazide	Aprinox
Benzthiazide	Aquatag
Bumetanide	Burine
Chlorothiazide	Diuril
Cyclothiazide	Anhydron
Ethacrynic Acid	Edecrin
Flumethiazide	---
Furosemide	Lasix
Hydrochlorothiazide	Aprozide
Hydroflumethiazide	Leodrine
Methyclothiazide	Aquatensen
Metolazone	Zaroxolyn
Polythiazide	Renese
Probenecid	Benemid
Quinethazone	Hydromox
Spirolactone	Aldactone
Triamterene	Jatropur, Dytac
Trichlormethiazide	Anatran

and related substances

B. EPITESTOSTERONE

C. PROBENECID

III. CERTAIN STIMULANTS

<u>Generic Name</u>	<u>Brand Names (Examples)</u>
Amphetamine	Greenies, Speed
Ephedrine	Ma Huang, Chi Powder
Fenfluramine	Phen-Fen, Redux
Methamphetamine	---
Methylephedrine	---
Modafinil	---
Norfenfluramine	---
Pseudoephedrine *	Sudafed, Actifed
Phentermine	Fastin, Adipex, Ionamin
Synephrine	Bitter Orange, Citrus Aurantium

* Except as properly prescribed by Club medical personnel.

IV. DOPING METHODS

Introduction of a Prohibited Substance into the body by any means, including but not limited to the introduction of a Prohibited Substance, or the ingestion or injection of a supplement or other product containing a Prohibited Substance.

Pharmacological, chemical or physical manipulation by, for example, catheterization, urine substitution, tampering, or inhibition of renal excretion by, for example, probenecid and related compounds.

APPENDIX B**Personnel**

The NFL Advisor on Anabolic Steroids and Related Substances is Dr. John Lombardo, Medical Director of the Max Sports Medicine Institute and Clinical Professor in the Department of Family Medicine at the Ohio State Medical School. He also was previously a member of the faculty at the Sports Medicine Center of the Cleveland Clinic and has served as team physician to the Cleveland Cavaliers of the NBA and as an adviser on steroid issues to both the NCAA and the Olympic Committee.

The Consulting Toxicologist on Anabolic Steroids and Related Substances is Dr. Bryan Finkle, a board-certified forensic toxicologist and Research Professor of Pharmacology-Toxicology in the College of Pharmacy and Department of Pathology in the College of Medicine at the University of Utah Health Sciences Center. He also serves as a consultant to the International Olympic Committee Medical Commission, World Anti-Doping Agency and United States Anti-Doping Agency.

Collection Procedures

Upon reporting to the collection site, the player to be tested shall be required to produce a government-issued photo ID. Once his identity is confirmed, the player will be given the opportunity to select a sealed urine specimen cup. The player will furnish a urine specimen under observation by an authorized specimen collector. Thereafter, the player will be given the opportunity to select a sealed collection kit which will be used to store and ship his urine specimen. In the player's presence, the specimen will be split between an "A" bottle and a "B" bottle and resealed with security seals. The specimen collector will note any irregularities concerning the specimen, following which the player will be given the opportunity to sign the chain-of-custody form.

Once the bottles have been sealed and the chain-of-custody form has been completed, the bottles will be inserted into containers and placed back into the kit. The kit will then be sealed and sent by Federal Express or similar carrier to the testing laboratories.

All bottles will be identified by a control identification number. The number on the bottles will be the same as the number on the chain-of-custody form. The testing laboratories themselves will be unable to associate any specimen with an individual player.

APPENDIX D**Procedures Following Positive or Presumptively Positive Tests**

The following will outline the procedures to be used following the testing laboratory's notification to the Advisor of a positive "A" test:

A. Standard Tests

1. The Advisor will contact the laboratory for verification.
2. After verifying the result with the laboratory, the Advisor will match the control identification number with the player's name, and will then notify the player in writing of the positive result and request that the player call him to discuss the result.
3. If the player wishes to have the "B" sample test observed by a qualified toxicologist, he will notify the Advisor in writing within five (5) business days of receiving written notification of the positive test result. If observation is requested, the Advisor and toxicologist will schedule the test for the first mutually available date. Otherwise, in the absence of a reasonable basis for delay, the "B" sample test will be initiated within seven (7) business days following player's receipt of written notification of the positive test or as soon as possible following the Advisor's receipt of written notification by the player that he does not wish the test to be observed, whichever is sooner.
4. The laboratory will report the "B" sample test result to the Advisor, who may review the case with the Consulting Toxicologist and the laboratory director as appropriate.
5. The Advisor will report his findings to the player and, if confirmed positive or if reasonable cause testing is indicated, to the team physician and League Office.
6. If the player is subject to disciplinary action, the League Office will notify him in writing.
7. If the player decides to appeal, he must so indicate in writing to the Commissioner within five (5) business days after receiving a notice of discipline from the League Office. He should state in his notice of appeal whether or not he desires a hearing.
8. If a hearing is requested, the League will schedule it to take place within twenty (20) calendar days of the request absent mutual agreement or extenuating circumstances. The hearing may be conducted by conference call upon agreement of the parties.
9. Prior to the hearing, the League will provide the player and NFL Players Association with a laboratory documentation package prepared in accordance with Appendix I. In the absence of clear evidence to the contrary, such package will be deemed full and complete for the purpose of evaluating the integrity of the chain-of-custody and test results. Once the player has had sufficient opportunity to review the documentation package, he must provide to the League a written statement setting forth the specific grounds of his appeal. Additionally, no

later than two (2) business days prior to the hearing the parties will exchange copies of any documents or other evidence on which they intend to rely and a list of witnesses expected to provide testimony. Following the exchange, the parties may provide further supplementation as appropriate.

10. Once the record is closed, the Commissioner or his designee will evaluate the evidence and render a written decision with respect to disciplinary action within five (5) calendar days. (If appropriate, a summary ruling may be rendered, followed by a formal decision as time permits.)

B. Pre-Employment Tests

When notified of a positive test result obtained prior to employment (including Combine and Free Agent tests), the procedure set forth in Part A above shall apply, except that:

1. The "B" sample test will be conducted on the first available date without the opportunity for observation by an outside toxicologist.
2. Upon confirmation of the positive test result, the Advisor shall promptly notify the League Office and: all Clubs in the case of a Combine test, and the requesting Club(s) in the case of a Free Agent test.

The League will endeavor to conduct and conclude these procedures expeditiously, with appropriate regard to the possible need for follow-up tests or other measures required in the Advisor's judgment, or other extenuating circumstances.

Examples of Medical Evaluations Following a Positive Test

A. Initial Positive Test

History and Physical

Emphasize:

Cardiovascular
 Abdominal
 Genitourinary (testicle, prostate, impotence, sterility)
 Psychological (aggressiveness, paranoia, dependency, mental status)
 Immune system (masses, infections, lymphadenopathy)

Testing

CBC with Differential
 General chemistry panel
 Electrolytes, BUN/Creatinine, Glucose, Liver enzymes
 Lipid Assay
 Triglycerides/cholesterol, HDL-C, LDL-C
 Urinalysis
 Cardiovascular
 EKG
 Chest X-ray
 Stress test
 Echocardiogram
 Semen analysis
 Endocrine Profile
 TSH, LH, FSH, T4, TBG, Testosterone, SHBG (TBG)
 Liver scan (either MRI or CT or Ultrasound or liver/spleen Scan)

B. Repeat Positive Test Evaluation

History and Physical - as above

Testing - Lab as above

CV	}	As indicated by time since last test and
Liver scan	}	by history and physical

APPENDIX F

POLICY ON ANABOLIC STEROIDS AND RELATED SUBSTANCES
-Use of Supplements-

Over the past several years, we have made a special effort to educate and warn players about the risks involved in the use of "nutritional supplements." Despite these efforts, several players have been suspended even though their positive test result may have been due to the use of a supplement. Subject to your right of appeal, **if you test positive or otherwise violate the Policy, you *will* be suspended.** You and you alone are responsible for what goes into your body. Claiming that you used only legally available nutritional supplements will not help you in an appeal.

As the Policy clearly warns, supplements are not regulated or monitored by the government. This means that, even if they are bought over-the-counter from a known establishment, there is currently no way to be sure that they:

- (a) contain the ingredients listed on the packaging;
- (b) have not been tainted with prohibited substances; or
- (c) have the properties or effects claimed by the manufacturer or salesperson.

Therefore, if you take these products, you do so AT YOUR OWN RISK! For your own health and success in the League, we strongly encourage you to avoid the use of supplements altogether, or at the very least to be extremely careful about what you choose to take.

Take care and good luck this season.

Sincerely,

HAROLD HENDERSON

Executive Vice President
National Football League

GENE UPSHAW

Executive Director
NFL Players Association

APPENDIX G

To: All NFL Players
From: Dr. John Lombardo
Subject: Supplements
Date: November 10, 1998

Gene Upshaw and representatives from the NFLPA along with Harold Henderson and representatives from the NFL Management Council recently met with me and a number of my colleagues to discuss dietary supplements and their interrelationship with the NFL Policy and Procedures for Anabolic Steroids and Related Substances.

Upon the conclusion of the meeting all participants felt that I should advise you of both health and policy violation risks you may be faced with by adding over-the-counter supplements to your diet.

In 1994, the U.S government passed a law entitled "The Dietary Supplement Health and Education Act". As a result of this law, the supplement manufacturers and distributors do not have to prove the effectiveness or the safety of their products. Also, the ingredients of the supplements are not checked by any independent agency, such as the Food and Drug Administration (FDA), to certify the contents of the supplements. Therefore, the effectiveness, side effects, risks and purity of many products you can buy at the health food store are unknown.

This law also permits over-the-counter sale of products that violate the NFL Steroid policy. For example, androstenedione, a steroidal hormone that serves as a direct precursor for the synthesis of testosterone, is widely advertised. However, since this substance is found in some plants and animals, manufacturers are allowed to market it as a dietary supplement. This product, like many other supplements that contain substances that violate the policy, can be purchased at your local health food store and, when ingested, is no different than taking illegal anabolic steroids or related substances.

If you take a supplement that contains a substance that violates the policy it will subject you to discipline. More importantly, you run the risk of harmful health effects associated with steroid use.

I will continue to provide you with information on the subject throughout the year. In the meantime, if you have any questions about supplements or the steroid policy, please contact me.

JOHN A. LOMBARDI, M.D.
NFL Advisor for Anabolic/Androgenic
Steroids and Related Substances

APPENDIX H

U.S. Department of Justice
Drug Enforcement Administration
Washington, D.C. 20537
September 4, 2001

Mr. Paul Tagliabue
Commissioner
National Football League
410 Park Avenue
New York, New York 10022

Dear Commissioner Tagliabue:

Thank you for your concern regarding the policies of the Drug Enforcement Administration (DEA) in enforcing the Anabolic Steroids Control Act of 1990 and the National Football League's (NFL) policies to eliminate the use of anabolic steroids in the NFL.

Your program of random and reasonable cause testing for steroids reinforces the provisions of the Anabolic Steroids Control Act of 1990. Under this law, DEA has the responsibility to regulate all aspects of the legitimate steroid industry, including doctors and pharmacists.

To those who use anabolic steroids, including professional athletes, I should emphasize that under the Act, possession of even personal use quantities not validly prescribed by a doctor is a federal crime. The maximum penalty for simple possession (possession not for sale), is one year in a federal prison and a minimum \$1,000 fine.

DEA will also investigate and prosecute violations involving the unlawful manufacture, distribution, and importation of anabolic steroids. Doctors who prescribe anabolic steroids for other than legitimate purposes will be prosecuted. Pharmacists who dispense anabolic steroids without a doctor's prescription or with one that they know is bogus, will also be prosecuted.

While DEA's primary focus is law enforcement, we also recognize the importance of public education on matters such as these. I would thus appreciate it if you would make this letter directly available to each NFL team, its players, physicians, trainers, and other personnel.

Sincerely,
[Signature on file]
Asa Hutchinson
Administrator

APPENDIX I

Standard Form of Documentation Package

<u>Tab</u>	<u>Item(s)</u>
1.	Cover Sheet
2.	Table of Contents
3.	General Overview of Laboratory Procedures
4.	Custody and Control Forms
	a. External Chain of Custody Form
	b. Specimen Chain of Custody
5.	Initial Test Information (A-Bottle)
6.	Confirmation Test Information
	a. Confirmation Test Description
	b. Chain of Custody Pull List
	c. Confirmation Aliquot Chain of Custody Log
	d. Specimen ID Verification Report
	e. Analytical Data
7.	Certification Information
	a. Pending Positive Report (Certifying Scientist Worksheet)
	b. Laboratory Report
8.	Re-Test Information (B-Bottle)
	a. Chain of Custody Pull List
	b. Confirmation Aliquot Chain of Custody Log
	c. Specimen ID Verification Report
	d. Analytical Data
9.	Re-Test Certification Information
	a. Pending Positive Report (Certifying Scientist Worksheet)
	b. Laboratory Report

APPENDIX J**Bonus Forfeiture**

A Player who is suspended under this Policy shall forfeit and return to his Club (or forgo entitlement to unpaid portions of) the proportionate amount of his signing bonus corresponding to the period of the suspension; provided that, if (a) the suspension is for a period of one year or more, (b) the Player's Contract is tolled during such suspension, and (c) the Player subsequently performs under the Contract during the expended period that results from the tolling, then the Player shall earn back the proportionate amount of forfeited or forgone signing bonus for the extended period in which he performs. For purposes of this Section, "proportionate amount" means $1/17^{\text{th}}$ of the signing bonus allocation for each regular season week or regular season game missed per League Year covered by the suspension, or $1/17^{\text{th}}$ of the forfeited or forgone signing bonus allocation for each regular season week or regular season game subsequently played per extended year of the Player's Contract, in the case of a Player earning back previously forfeited or forgone signing bonus.

By way of example, without limitation on any other example, if a Player with a four-year Player Contract for the 2006-2009 League Years that contains a signing bonus of \$4 million is suspended for the 2007 and 2008 League Years for violation of the Policy, then the Player would forfeit and return to his Club \$2 million in signing bonus allocation (\$1 million for the 2007 League Year and \$1 million for the 2008 League Year). If, after performing under the Player Contract in the 2009 League Year, the Player then performed one of his previously tolled years in the 2010 League Year, he would earn back \$1 million. If the Player then performed for eight games of the second of his previously tolled years in the 2011 League Year and then retired, he would earn back an additional \$470,588 ($8/17 \times \$1$ million).

Ms. SCHAKOWSKY. Gary Bettman.

STATEMENT OF GARY BETTMAN, COMMISSIONER, NATIONAL HOCKEY LEAGUE

Mr. BETTMAN. Madam Chair, members of the subcommittee, thank you for inviting us here today.

The prevention and detection of the use of performance-enhancing drugs is a matter that the National Hockey League and the National Hockey League Players Association take quite seriously. Indeed, while our historical experience indicates that performance-enhancing drugs are not a problem in the NHL, we nevertheless believe that the public at large and our fans in particular are entitled to have confidence that our games are being played in an environment free of performance-enhancing substances.

Accordingly, the NHL and the NHLPA implemented a modernized drug testing and performance-enhancing substances control policy that is specifically directed to prevent the use of performance-enhancing drugs in our game. Consistent with the principles attributed to any comprehensive policy against doping, our program places significant emphasis on education and awareness regarding the use of performance-enhancing substances.

Since the inception of the program, the NHL and the NHLPA have monitored the operation of the program and have, when appropriate, modified it from time to time to ensure that it is functioning effectively in discouraging and eliminating the use, however negligible, of performance-enhancing substances in our sport.

Key features of our program include that the program is managed by an independent third-party administrator that is responsible for sample collection, and determining when the random no-notice testing will occur. Samples are independently analyzed by a WADA-certified laboratory. An independent third-party administrator coordinates with the laboratory to create reports of test results. NHL players are subject to testing for performance-enhancing drugs designated on the WADA out-of-competition panel. And, on a random basis, players are subject to up to three no-notice tests each season.

Positive tests for performance-enhancing substances result in mandatory discipline, from a suspension of 20 games without pay for a first offense to permanent suspension without pay, obviously, for a third offense.

As part of the mandatory educational component, in addition to the players receiving education, education and training are also provided to the club athletic trainers and club physicians. The educational provisions reflect the comprehensive nature of the program and the belief that education regarding the dangers of any illegal substances is perhaps the most effective tool in preventing their use and abuse.

The NHL and the NHLPA strongly believe that our collective knowledge regarding our sport has enabled us to develop an effective and meaningful program. Indeed, since its inception in 2005, two significant modifications have been made to the program. First, the program initially provided for two tests per season. That limitation was modified to provide on a random basis that teams can be tested up to three times per season. And, second, the program was

modified to create a mechanism that allows for education and subsequent testing of players who were added to a roster after training camp, when the preseason education has been provided to clubs.

As a historical matter, the many years of NHL players being tested in international competition, as well as the recent testing under our program, evidences that performance-enhancing drugs have never been part of the culture of the NHL and that instances of use by our players have been extremely rare. This is not surprising when one considers that the alleged benefits of steroid use, significant large-muscle development, are not consistent with playing hockey at the highest level of the sport; and the resulting bulkiness attributable to steroid use simply is not a desired characteristic of skilled NHL players.

Over the past 12 years, nearly a thousand NHL players have participated in international competitions, including world championships and the Olympics, and they were subject to drug testing under the standards of WADA. Over this time, we are aware of only two players who were disciplined for taking a prohibited substance and were suspended from international competition; and, of the two, one tested positive for Propocia.

The testing results in the first two years of our program confirmed that there is not a practice of NHL players using performance-enhancing drugs, as only one player has tested positive in the past two-and-a-half seasons.

The NHL also recognizes its obligation to educate the public and our young fans in particular regarding the dangers of taking performance-enhancing substances. To this end, we have worked with the National Federation of State High School Associations to create a video that is being used to educate high school coaches, student athletes, and their parents about the dangers of performance-enhancing substances; and we will continue our efforts in this regard.

The NHL also recognizes its role and responsibility in helping to promote research on performance-enhancing drugs, including the ability to detect drugs that currently are not detectable, such as HGH. The NHL has joined with the USOC and the others here today in the Partnership for Clean Competition, as has already been discussed. To the extent feasible and practical, we believe that it is important to have an HGH testing protocol that is meaningful and effective.

The NHL appreciates being provided an opportunity to express our views regarding these issues, and we will be happy to take your questions. Thank you.

Ms. SCHAKOWSKY. Thank you, Mr. Bettman.

[The prepared statement of Mr. Bettman follows:]



**STATEMENT OF COMMISSIONER GARY BETTMAN
BEFORE THE HOUSE OF REPRESENTATIVES COMMITTEE ON ENERGY
AND COMMERCE, SUBCOMMITTEE ON COMMERCE, TRADE AND
CONSUMER PROTECTION REGARDING DRUGS IN SPORTS**

**SUBMITTED IN CONNECTION WITH
TESTIMONY ON FEBRUARY 27, 2008**

I would like to thank the Chairman, the Ranking Member and the Subcommittee Members for inviting me to testify today.

The prevention and detection of the use of performance enhancing drugs is a matter that the National Hockey League (“NHL”) and the National Hockey League Players’ Association (“NHLPA”) take quite seriously. Indeed, while our historical experience indicates that performance enhancing drugs are not a problem in the NHL, we nonetheless believe the public at large, and our fans, in particular, are entitled – and deserve – to have confidence that our games are being played in an environment free of performance enhancing substances. Accordingly, in July 2005, as part of the current Collective Bargaining Agreement (“CBA”), the NHL and the NHLPA implemented a modernized drug testing and performance enhancing substances control policy that is specifically directed to prevent the use of performance enhancing drugs in our game. Consistent with the principles attributed to any comprehensive policy against doping, the NHL/NHLPA Performance Enhancing Substances Program (“Program”) places significant emphasis on education and awareness regarding the use of performance enhancing substances. Since the inception of the Program, the NHL and NHLPA have monitored the operation of the Program and have, when appropriate, modified it from time to time to ensure that it is functioning effectively in discouraging and eliminating the use, however negligible, of performance enhancing substances in our sport.

As stated in the CBA, the primary purposes of the Program include: (1) the education of players regarding the health risks posed by the use of prohibited performance enhancing substances (“Prohibited Substances”); (2) the treatment of

players who have used Prohibited Substances; and (3) the deterrence and prevention of such use through education, randomly timed no-notice testing, and the imposition of disciplinary penalties where appropriate.

Key features of the Program include the following:

- The Program is managed by an independent third-party administrator that is responsible for hiring independent third-party sample collectors, and determining when random no-notice testing will occur.
- The samples are independently analyzed by a WADA-certified laboratory, located in Montreal, that is managed by Dr. Christiane Ayotte (the "Laboratory").
- The independent third-party administrator coordinates with the Laboratory to create reports of the test results.
- NHL players are subject to testing for the performance enhancing drugs designated on the WADA out-of-competition panel.
- On a random basis, the players are subject to up to three (3) no-notice tests each season.
- Positive tests for performance enhancing substances result in mandatory discipline as follows: (1) for the first positive test, a suspension of twenty (20) NHL games without pay; (2) for the second positive test, a suspension of sixty (60) NHL games without pay; and (3) for the third positive test, a "permanent" suspension without pay, although a player so suspended may reapply for discretionary reinstatement after a minimum period of two (2) years by making an application to a committee comprised of designated legal and medical representatives from the NHL and the NHLPA.

The Program incorporates a mandatory educational component providing the players with in-person education on Prohibited Substances and the nature of the Program each year beginning in Training Camp. Under the Program, education and training on the details of the Program also is provided to Club Athletic Trainers and Club Physicians. The educational provisions reflect the comprehensive nature of the Program, and the belief of the NHL and the NHLPA that education regarding the dangers of illegal substances (both performance enhancing and otherwise) is, perhaps, the most effective tool in preventing their use and abuse.

The NHL and the NHLPA strongly believe that our collective knowledge regarding our sport has enabled us to develop an effective and meaningful Program. We also believe that our joint active management of the Program has enabled us, and will continue to enable us, to monitor its operation and to modify it over time to ensure that it is functioning effectively in discouraging and eliminating the use of performance enhancing substances in our sport. Indeed, since the Program's inception in 2005, two significant modifications already have been made to the Program.

First, the Program as initially negotiated and implemented provided for players to be tested up to two (2) times per season. This limitation was modified during the 2006/07 season and instead, on a random basis, the players on some NHL teams are subject to up to three (3) no-notice tests per season. The independent third-party administrator has exclusive responsibility for determining how many times each team will be tested.

Second, the Program was modified during the 2006/07 season to create a mechanism that allows for the education and subsequent testing of players who are added to a roster after the date on which their Club's in-person training has been provided.

As a historical matter, the many years of testing NHL players who have been involved in international competitions, as well as the more recent testing of our players under the NHL/NHLPA Program, evidence that performance enhancing drugs have never been part of the "culture" of the NHL, and that instances of use by our players have been extremely rare. This is not surprising when one considers that the alleged benefits of steroid use – significant large muscle development – are not consistent with playing hockey at the highest levels of the sport, and the resulting bulkiness attributable to steroid use simply is not a desired characteristic of skilled NHL players.¹ Over the past twelve years, nearly 1,000 NHL players have participated in international competitions, including the IIHF World Championships, the 1998, 2002, and 2006 Olympics and the 2004 World Cup of Hockey, where they were subject to drug testing under the standards of the World Anti-Doping Agency ("WADA"). Over this time period, we are aware of only two players who were disciplined for taking a prohibited substance and were suspended from international competition. Of the two, one of the players tested positive for Propecia. Finally, the testing results for the first two full years of the Program (2005/2006 and 2006/2007) seemingly confirm that there is not a practice of NHL players using performance enhancing drugs: 2,950 tests were conducted on NHL players, and of that number, one player was determined to have violated the terms of the Program. That player was suspended for 20 NHL games without pay. With respect to the 2007/08

¹ We recognize that athletes have, on occasion, taken performance enhancing drugs in an effort to speed up recovery from an injury. However, while we do not believe that NHL players have adopted this approach, we feel confident that our Program is designed to discourage, and eliminate, such use.

season, 770 tests have been conducted to date and no players have been found to have violated the terms of the Program. These statistics offer strong evidence that the Program is operating successfully in accomplishing its primary purposes, as outlined above.

The NHL also recognizes its obligation to its fans – not only to produce our games in an environment free of performance enhancing substances – but also to educate the public, and our young fans in particular, regarding the dangers of taking performance enhancing substances. To this end, we have worked with the National Federation of State High School Associations to create a video that is being used to educate high school coaches, student athletes and their parents about the dangers of performance enhancing substances. The NHL will continue to be active in helping to raise awareness in this area.

The NHL also recognizes its role and responsibility in helping to promote research on performance enhancing drugs, including the ability to detect drugs that currently are not detectable, such as Human Growth Hormone (“HGH”). The NHL has joined with the United States Olympic Committee and others in a new, long-term program, the Partnership for Clean Competition, that has been created to fund and develop meaningful and scientifically-legitimate research addressing the detection and deterrence of the use of banned and illegal substances in sport, including the identification and detection of designer substances and the development of a widely-available cost effective test to detect HGH. To the extent feasible and practical, we believe it is important to have a testing protocol that is meaningful and effective.

The NHL appreciates being provided with the opportunity to express our views regarding these issues. We remain available should you seek additional information concerning the nature or effectiveness of our Program.

Ms. SCHAKOWSKY. Paul Kelly.

**STATEMENT OF PAUL KELLY, EXECUTIVE DIRECTOR,
NATIONAL HOCKEY LEAGUE PLAYERS ASSOCIATION**

Mr. KELLY. Madam Chair, Congressman Whitfield, members of the subcommittee, my name is Paul Kelly; and I serve the as the Executive Director of the National Hockey League Players Association. I would like to thank you for this opportunity to speak on behalf of the players with regard to the important issue of performance-enhancing substances in sports.

Having served for 10 years as a Federal prosecutor, including one term as the chief of the New England Organized Crime Drug Enforcement Task Force, I am no stranger to the hazards and risks associated with drugs; and I want to clearly and emphatically state that the NHL Players Association strongly opposes the use of performance-enhancing substances by anyone in our sport. This issue affects the competitive integrity of our sport, the personal health of our players, and indeed the health of millions of young hockey fans across the world that look up to our players as role models. The stakes are high, and we are fully committed to seeing that drugs have no place in hockey.

Fortunately, hockey players have historically steered clear of performance-enhancing substances. This was, first and foremost, a credit to our players, but it is also a simple reflection of the nature of our sport. Anabolic steroids, human growth hormone and other muscle-enhancing substances do little to augment the performance of our athletes, whose success depends primarily on hand-eye coordination, speed, agility, endurance, communication, and, most of all, teamwork.

Of course, the fact that we have virtually no history of performance-enhancing substance abuse does not free us of the responsibility to keep drugs out of hockey; and we are fully aware that performance-enhancing substances have been used by some not just to build muscle mass but also as a means to speed recovery from injury and/or muscle fatigue. It is with that in mind that the NHLPA and the NHL implemented a League-wide drug policy that not only tests the players but educates them as well. Because the results we have seen have been so encouraging, I would like to an opportunity very briefly to share the history and details of our policy.

In 1996, as part of the previous collective bargaining agreement, the NHLPA and the NHL jointly implemented the Substance Abuse and Behavioral Health Program. This wide-ranging program was designed to identify and address potential substance abuse issues among NHL players in a confidential, fair, and effective manner. We accomplished this by incorporating education and counseling, inpatient and outpatient treatment and testing, follow-up care, and, where appropriate, punitive sanctions, up to and including permanent suspension from play.

Moreover, NHL players' long history of participation in international hockey competitions and the accompanying track record that players have accumulated with respect to drug testing performed at such competitions provide empirical evidence showing that performance-enhancing substances are not, to date, a prevailing issue in our sport.

Over the past 12 years, nearly a thousand NHL players have participated in IIHF World Championships, the World Cup of Hockey and the 1998, 2002 and 2006 Winter Olympics, all of which used testing procedures and banned substance lists consistent with the World Anti-Doping Agency code. Over this entire time span, we are aware of only a handful of positive tests for performance-enhancing drugs; and in more than half of those cases there were extenuating circumstances that accounted for the player having tested positive.

In sum, our program doctors, who have had intimate access and involvement with our players, for more than 10 years of drug testing performed in conjunction with international hockey competitions have encountered no steroid or performance-enhancing substance abuse problem in our sport. Nevertheless, because the issue of performance-enhancing substances has gained prominence over the years and in an abundance of caution with regard to potential problems that might develop in our sport, we decided with the NHL to update our testing and disciplinary procedures during the last round of collective bargaining.

As Commissioner Bettman has just described, in July of 2005, the NHL and the NHLPA implemented a comprehensive drug testing and control policy that is specifically aimed at discouraging the use of performance-enhancing substances in hockey.

In order to keep my testimony from running beyond the limits, I will refrain from providing a detailed description of the program or its key features, which Commissioner Bettman has just touched on. However, I would like to take just a brief opportunity to share with you the encouraging results that we have seen over the past 3 years of this program's existence.

The results we have seen have been as follows: During the 2005-2006 and 2006-2007 and the first half of the current season, 3,570 no-notice drug tests have been conducted on NHL players. Of that number, only one player was determined to have violated the terms of our program. That player was suspended for 20 games without pay. And, since then, no players have tested positive.

These numbers offer compelling evidence that our program is comprehensive and thorough; and, even more than that, the numbers show that our program is working.

As I mentioned before, this track record is a reflection of our players' integrity, hard work and dedication. It also speaks to our continuous joint efforts with the League to make sure that players, trainers and other staff members are educated about the dangers associated with performance-enhancing drugs. We are committed to continuing to work with the NHL to fulfill this mission and to review and consider modifications and improvements to our existing testing program.

Again, I want to be clear that we recognize that drugs in sports is a crucial issue to players and fans in all sports and at all levels and ages; and I greatly appreciate you inviting the NHL Players Association to be involved in this national dialogue on this important issue. Thank you again for inviting me to participate in today's hearing.

Mr. RUSH. [Presiding.] The Chair thanks the witness.

[The prepared statement of Mr. Kelly follows:]

**BEFORE THE UNITED STATES COMMITTEE ON ENERGY AND COMMERCE,
SUBCOMMITTEE ON COMMERCE, TRADE AND CONSUMER PROTECTION**

STATEMENT OF PAUL V. KELLY

EXECUTIVE DIRECTOR

NATIONAL HOCKEY LEAGUE PLAYERS' ASSOCIATION

27 FEBRUARY 2008

Mr. Chairman and Members of the Subcommittee:

My name is Paul Kelly and I serve as the Executive Director of the National Hockey League Players' Association (NHLPA). I would like to thank you for the opportunity to speak on behalf of the players with regard to the important issue of performance enhancing substances in sports. Having served ten years as federal prosecutor, including one term as the Chief of the New England Organized Crime Drug Enforcement Task Force, I am no stranger to the hazards and risks associated with drugs, and I want to clearly and emphatically state that the NHLPA strongly opposes the use of performance enhancing substances by anyone in our sport. This issue affects the competitive integrity of our sport, the personal health of our players, and indeed, the health of the millions of young hockey fans across the world that look up to our players as role models. The stakes are high, and we are fully committed to seeing that drugs have no place in hockey.

Fortunately, hockey players have historically steered clear of performance enhancing substances. This is first and foremost a credit to the players, but it is also a

Statement of Paul V. Kelly
February 27, 2008

simple reflection of the nature of our sport. Anabolic steroids, human growth hormone, and other muscle-enhancing substances do little to augment the performance of our athletes, whose success depends primarily on hand-eye coordination, speed, agility, endurance, communication, and most of all – teamwork. Of course, the fact that we have virtually no history of performance enhancing substance abuse does not free us of the responsibility to keep drugs out of hockey. And we are fully aware that performance enhancing substances have been used by some, not just to build muscle mass, but also as a means to speed recovery from injury and/or muscle fatigue. It is with that in mind that the NHLPA and National Hockey League (NHL) have implemented a league-wide drug policy that not only tests the players, but educates them as well. Because the results we have seen have been so encouraging, I would like to take this opportunity to share some of the history and details of our policy.

NHLPA/NHL Substance Abuse and Behavioral Health Program

In 1996, as a part of the previous Collective Bargaining Agreement, the NHLPA and NHL jointly implemented the “Substance Abuse and Behavioral Health Program” (SABH Program). This wide-ranging program was designed to identify and address all potential substance abuse issues among NHL players in a confidential, fair, and effective manner. We accomplished this by incorporating education, counseling, in-patient and outpatient treatment and testing, follow-up care and, where appropriate, punitive sanctions, up to and including permanent suspension from play. Though we have since modernized and updated our testing and disciplinary procedures – which I will discuss in

Statement of Paul V. Kelly
February 27, 2008

more detail later – the educational and treatment components of the SABH Program remain.

What the SABH Program doctors learned over several years is that, to the extent NHL players have exhibited substance abuse issues at all, those limited cases are typically associated with alcohol, as opposed to steroid or performance enhancing substances. Moreover, NHL players' long history of participation in international hockey competitions – and the accompanying track record the players have accumulated with respect to drug testing performed at such competitions – provide empirical evidence showing performance enhancing substances are not to date a prevailing issue.

Over the past twelve years, no fewer than 1,000 NHL players have participated in the IIHF World Championships; the 2004 World Cup of Hockey; and the 1998, 2002, and 2006 Winter Olympics – all of which used testing procedures and banned substance lists consistent with the World Anti-Doping Agency (WADA) Code. Over this entire time span we are aware of only a handful of positive tests for performance enhancing drugs. And in more than half of those cases there were extenuating circumstances – a mistaken use defense or therapeutic use exemption, for example – that accounted for the player having tested positive. In sum, neither the SABH Program doctors, who have had intimate access and involvement with our players, nor the more than ten years of drug testing performed in conjunction with international hockey competition have uncovered any steroid or other performance enhancing substance abuse problem in our sport.

Statement of Paul V. Kelly
February 27, 2008

NHLPA/NHL Performance Enhancing Substances Program

Nevertheless, because the issue of performance enhancing substances has gained prominence over the past few years, and in an abundance of caution with regard to any potential problems that might develop specific to our sport, we decided with the NHL to update our testing and disciplinary procedures during our last round of collective bargaining. As part of the Collective Bargaining Agreement (CBA) executed in July 2005, the NHLPA and NHL implemented the Performance Enhancing Substances Program (the Program), a comprehensive drug testing and control policy that is specifically aimed at discouraging the use of performance enhancing substances in hockey. The purposes of this Program include: educating players regarding the health risks posed by the use of performance enhancing substances; treating players found to have used such substances; and deterring future use through random no-notice testing and the imposition of disciplinary penalties for noncompliance. The Program is jointly administered by a committee that includes the NHLPA General Counsel, NHL Deputy Commissioner, and two consulting expert doctors.

In order to keep my testimony from running beyond the Subcommittee's limits, I will refrain from providing an in-depth description of our Performance Enhancing Substances Program, and instead refer you to the NHL's submission on the Program because I understand that information to be accurate. However, I would like to take a couple brief moments to share with you, first, a few of our testing Program's key features, and second, the encouraging results we have seen since implementing the Program some two and a half years ago.

Statement of Paul V. Kelly
February 27, 2008

Key Testing Features. Our main goal when structuring the Program was to implement a testing regimen that was both independent and thorough. To further this goal:

- The Program is managed by an independent entity that: (1) determines when random, no-notice tests will occur; and (2) hires independent collectors to gather test samples;
- The performance enhancing substances tested under the Program are those included on the WADA out-of-competition panel;
- NHL players are subject to up to three no-notice tests each season: ten teams undergo one no-notice test; ten teams undergo two no-notice tests; and ten teams undergo three no-notice tests; and
- All test samples are analyzed by an independent, WADA-certified laboratory.

Moreover, any player who tests positive for a banned substance receives mandatory discipline as follows:

- For a first positive test, a player is suspended twenty games – roughly one quarter of an entire regular season – without pay;
- For a second positive test, a player receives a 60-game suspension without pay; and
- For a third positive test, a player is permanently suspended from the NHL, the one caveat being that such a player is eligible to apply for reinstatement after sitting out two years.

Statement of Paul V. Kelly
February 27, 2008

Program Results. The results we have seen in the first two and a half seasons of testing under this system have been quite encouraging. During the 2005/2006 and 2006/2007 seasons and the first half of this current season, 3,570 no-notice drug tests were conducted of NHL players. Of that number, only one player was determined to have violated the terms of the Program. That player was suspended for twenty games without pay, and since then no players have tested positive. These numbers offer compelling evidence that our Program is comprehensive and thorough, but even more important than that, the numbers show our program is working.

As I mentioned before, this track record is a reflection of our players' integrity, hard work, and dedication. It also speaks to our continuous joint efforts with the League to make sure the players, trainers, and other team staff members are educated about the dangers associated with performance enhancing drugs. Because we are committed to continuing our work with the NHL to fulfill this mission, the players' position is that there is no need for drug testing legislation insofar as it would relate to the NHL. Again, I want to be clear that we recognize drugs in sports is a crucial issue to players and fans in all sports, at all levels and ages, and I greatly appreciate you inviting the NHL players to be involved in the national dialogue surrounding this important issue. In the end, however, we have the utmost confidence in our players and in our Program, and we believe sincerely that our numbers speak for themselves.

Thank you again for inviting me to take part in today's hearing.

**Statement of Paul V. Kelly
February 27, 2008**

Respectfully Submitted,

**Paul V. Kelly
Executive Director
National Hockey League Players' Association**

Mr. RUSH. The Chair now recognizes the ranking member of the subcommittee, Mr. Whitfield, for the purpose of introducing some documents into the record.

Mr. WHITFIELD. Mr. Chairman, thank you very much.

I just wanted to ask unanimous consent that we enter into the record a number—a multitude of e-mails that I received from owners and breeders of horse racing around the country, asking for Federal action to ban steroids in racing. I ask unanimous consent.

Mr. RUSH. Without objection, so approved.

[The information follows:]

FEB-27-2008 09:35 FROM-Payson Stud Inc.

T-059 P.001/001 F-003



49-522

Facsimile Transmission

TO: Congressman Ed Whitfield
DATE: 27 February 2008
FAX: [REDACTED]
FROM: VIRGINIA KRAFT PAYSON
RE: Use of Anabolic steroids

NUMBER OF PAGES (INCLUDING THIS COVER SHEET): 1

Dear Congressman Whitfield:

I, Virginia Kraft Payson, owner and president of Payson Stud, Inc., located in Lexington, Kentucky, and of Payson Park Thoroughbred Training Center, located in Indiantown, Florida, are supporting the need to have a federal ban outlawing the use of anabolic steroids in racehorses.

Sincerely,


Virginia
President

The information contained in this transmission is privileged, confidential and intended only for the use of the individual or entity named above. If you have received this communication in error, please notify Payson Stud, Inc. immediately by telephone, collect, and return the original message to us at the address shown below via the U. S. Postal service. You will be reimbursed for the required postage. Thank you.

[REDACTED]

Edward Whitfield

From: "Diana [REDACTED]" <[REDACTED]>
To: [REDACTED]
Sent: Tuesday, February 26, 2008 10:29 PM
Subject: Performance Enhancing Drugs in Horse Racing

Dear Congressman Whitfield,

I have been involved in the Thoroughbred industry for over 15 years and have become increasingly concerned with the use of performance enhancing drugs in our horses. I have seen first hand how detrimental anabolic steroids, pain medications and the other drugs used in racing Thoroughbreds have been not only to the horses, but also to the industry. The ever increasing use of these medications has, in my opinion, led to the breeding of unsound horses, an increase in the number of Thoroughbreds that are virtually crippled at an early age, the premature and tragic death of countless race horses and to jockeys who are even more at risk of serious injury or death. I believe that federal regulation prohibiting the use of these drugs is the only solution to this insidious problem and that this sort of action is long overdue. I also believe that the penalties for the use of banned substances must be more serious than a slap on the wrist.

I have personally seen and cared for horses that have left the racetrack looking, and apparently feeling, fit and healthy only to have them go quickly down hill once the medications in their systems wear off. This can take a period of days or weeks, but the horses will become unsound, lose dramatic amounts of weight, lose hair and even suffer life threatening illnesses as their bodies adjust to life without drugs. These horses can sometimes take many months to recover. I've had one horse whose recovery took almost 18 months.

Performance enhancing drugs also affect the racing fans. With the use of drugs in our horses a level playing field can not exist.

Thank you for all of your efforts on behalf of our horses.

Sincerely,

Diana [REDACTED]
[REDACTED]

--

2/26/2008

Edward Whitfield

From: [REDACTED]
To: [REDACTED]
Sent: Tuesday, February 26, 2008 10:18 PM
Subject: steroids

Dear Congressman Whitfield,

I am writing to applaud your position on steroids and to tell you that I have been involved in the sport of running on two different levels. I have been in the thoroughbred business, breeding, selling and racing horses for some 24 years and have had experience with this problem of steroids. Also, I was an ultra marathon runner for many years and have dealt with the problem there. I support your efforts to rid our industry of this problem. This action is long overdue and federal regulation is the only way to clean up this threatening situation to our sport and industry.

Thank you for your much needed help.

Sincerely,

Diane [REDACTED]

Idea to
please picky eaters. Watch video on AOL Living.

(<http://living.aol.com/video/how-to-please-your-picky-eater/rachel-campos-duffy/2050827?NCID=aolcmp0030000002598>)

2/26/2008

Edward Whitfield

From: [REDACTED]
To: [REDACTED]
Cc: [REDACTED]
Sent: Tuesday, February 26, 2008 6:20 PM
Subject: Re: steroids - including intraarticular steroids

Staci,

I do agree that anabolic steroid use needs to be addressed.

It is my belief that **intraarticular steroid** use is far more devastating to the horse, the sport and the horse racing industry and has a far greater role in **COMPROMISING THE HEALTH OF [EQUINE] ATHLETES AND UNDERMINING THE INTEGRITY OF COMPETITION**. We need to direct our attention to, and place *responsibility and accountability* on, the person who is on the other end of the syringe: the veterinarian, and the person who is really calling the shots: the trainer.

Today, most veterinarians in performance horse practice are given one incentive; to keep the horse in competition. In a 1998, as a prominent veterinarian [Dr. Greg Ferraro] left race track practice, he told the press:

"The more you use it [cortisone, injected into joints], the value becomes less and less over time. If a trainer is altering his training schedule, and resting the horse, that's fine. But if it's being used just to reduce joint swelling and keep the horse going, well, then that's trouble.

Everything in racing is set up to keep the horse racing. If he has to go home to the farm, nobody's happy. Not the owner, the trainer or the racing secretary. The interest is in keeping the horse at the track. And it is the responsibility of that trainer's veterinarian to say: 'This is enough.'"

"We know that drugs invented to help the horse are now being used against them. We have the technology, and we have the ability to understand how and why. If the racing industry would get behind us with some financing, we could educate trainers and owners."

He continued, "And it's easy for me to say, 'Hey, don't inject your horse too many times.' But it's hard for me to convey what I've learned in 25 years on the racetrack. Now, we're trying to get hard physical evidence to take to people and show them there's a right way and there's a wrong way."

Knowledge and evidence are rarely enough. All of the knowledge and hard physical evidence in the world may not change the way people behave. We all know that driving safely prevents injuries and saves lives, but we still need an incentive program. Some people need it more than others. Priorities, personal,

2/26/2008

professional, and financial goals are determinants of behavior. People respond to incentives.

If prevention of racing injury and breakdowns is our priority why don't we hold those who are actually making the decisions to treat and enter horses responsible? Today there are tools and technology that enable us to recognize those horses who are at-risk of injury and breakdown. What is missing? ... the incentive to use them. What would be an effective incentive?... loss of the *privilege* to practice veterinary medicine or train horses on the race track, i.e., suspension or revocation of the race track license. When trainers and veterinarians are held accountable and penalized for injuries and breakdowns, racing will change. The at-risk horse WILL BE IDENTIFIED and the horse, the rider, the sport, and the industry will be protected.

Staci, I do appreciate your email, your efforts and work to ensure the well-being of horses.

Kind regards,
Chris

Christine [REDACTED] DVM
[REDACTED]

-----Original Message-----

From: [REDACTED]
To: undisclosed-recipients;
Sent: Tue, 26 Feb 2008 8:14 am
Subject: steroids

February 26, 2008

I know that this is short notice BUT there is a hearing in Washington tomorrow morning about the use of anabolic steroids in athletes before the Committee on Energy and Commerce ~ "DRUGS IN SPORTS: COMPROMISING THE HEALTH OF ATHLETES AND UNDERMINING THE INTEGRITY OF COMPETITION". Congressman Ed Whitfield is including horse racing in the hearing and he needs some letters of support from horse owners saying that they agree that we need a federal ban outlawing their use in our race horses. If you believe, as I do, that the only way to rid ourselves of this problem is with federal help, please send a short letter of support to:

Congressman Ed Whitfield, [REDACTED]
or
[REDACTED]

You might mention your experience with the problem, say something to the effect that you support him in his efforts to rid our industry of this problem, that action is long overdue, that federal regulation is the only way to clean up this very threatening situation to our sport and industry.....

2/26/2008

Edward Whitfield

From: [REDACTED]
To: "Congressman Whitfield" [REDACTED]
Sent: Tuesday, February 26, 2008 8:04 PM
Subject: steroids in racing

Dear Congressman Whitfield,

I read you will be conducting a hearing on the problem of steroids in sports, including the problems associated with its use in horse racing. My family has been involved in this industry for decades and I wanted to applaud your efforts in helping rid sports of this terrible scourge. At least humans have a choice as to whether they want to pose a threat to their health by ingesting steroids. Horses, unfortunately, have no such voice.

I wish you full support in helping clean up our sport, it is long overdue .

Sincerely,

Kate [REDACTED]
[REDACTED]

2/26/2008

Edward Whitfield

From: "Tina [REDACTED]"
To: [REDACTED]
Sent: Tuesday, February 26, 2008 12:43 PM
Subject: RE: Anabolic steroids on athletes

Dear Congressman Whitfield,

This is a letter of support in your effort to ride Horse Racing of the use of anabolic steroids.

Thank your for your efforts.

Sincerely,
Rodes [REDACTED]

2/26/2008

Edward Whitfield

From: <[REDACTED]>
To: [REDACTED]
Sent: Tuesday, February 26, 2008 7:34 PM
Subject: Drugs in Sports

Dear Congressman Whitfield:

Drugs do not belong in sports, any sport. As an owner and breeder of Thoroughbred race horses I strongly support a ban on steroids and all drugs in race horses on race day. We must have zero tolerance if we are to preserve the health and protect the welfare of the horses, and we must have zero tolerance to protect the fans and the good name of the sport.

Let us ban all steroids and drugs of any type, in all sports. Race clean, or get out of the sport.

Sincerely,

Margaret [REDACTED]

Delicious ideas to please the pickiest eaters. [Watch the video on AOL Living.](#)

2/26/2008

Edward Whitfield

From: [REDACTED]
To: [REDACTED]
Sent: Tuesday, February 26, 2008 6:27 PM
Subject: re: Use of steroids in racehorses

Dear Congressman Whitfield,

I am writing you regarding the proposal to ban the use of steroids in racehorses. I have seen the effect close up, both in regard to the increased number of catastrophic and crippling injuries, loss of life in the horse and severe injury to the jockeys which can certainly be attributed at least in part to the use of steroids which is known to cause loss of calcification in bone.

I have also seen the effects close up in the surgical room, where due to the use of steroids, horses are becoming crippled with horrific arthritis, loss of fluid in the joint which result in the euthanizing of otherwise healthy and young animals.

I am in favor of a federal ban on the use of steroids and in the procedure known as "tapping" the joint, where the joint fluid is released from the joint supposedly to reduce inflammation.

Kindest regards,
Amber [REDACTED]

2/26/2008

Edward Whitfield

From: <[REDACTED]>
To: [REDACTED]
Sent: Tuesday, February 26, 2008 3:52 PM
Subject: Steroid use in horses

Dear Congressman Whitfield,

I have been involved in the thoroughbred industry for 20 years, racing horses in the USA as well as in Great Britain. Contrary to the American viewpoint, anabolic steroids are prohibited AT ALL TIMES in Great Britain, as well as all other countries affiliated with horse racing. There is no therapeutic use for steroids in racehorses, or any horse for that matter.

I applaud the Committee for including horse racing as a part of this hearing, as it is definitely time for a Federal level ban on steroid use in ALL racehorses in the United States. Our industry is not capable of policing itself on this matter as there is too much money involved (gambling, purses, stallions, corrupt veterinarians who administer/make money off of steroids/doping). Therefore, a Federal level ban is the only way to save the integrity of our sport, as well as the health of our noble horses.

Thank you!

Sincerely,
Lori [REDACTED]

Delicious ideas to please the pickiest eaters. [Watch the video on AOL Living.](#)

2/26/2008

Edward Whitfield

From: [REDACTED]
To: [REDACTED]
Sent: Tuesday, February 26, 2008 2:12 PM
Subject: Drugs in Horse Racing

Congressman Whitfield,

I am a 21 year old student at Vanderbilt University. I hope to soon enter the horse industry following my graduation, however there are many issues that I believe need immediate attention for the business to maintain its vitality and remain profitable. One of these issues is undeniably the use of anabolic steroids and other performance enhancing drugs at racetracks across America. These drugs not only harm the horse and weaken the breed, but deprive the voting public of an honest platform for calculated wagering. Please attend to this issue and let it be known that the youth of America's horse racing industry strongly supports the ban of performance enhancing medications at tracks across the country. Federal regulation will be needed to help this work.

Thank you for your time.

Arthur [REDACTED]
[REDACTED]

2/26/2008

Edward Whitfield

From: "Elizabeth Collier" [REDACTED]
To: [REDACTED]
Sent: Tuesday, February 26, 2008 12:04 PM
Subject: steroid with horses

Dear Mr. Whitfield,

I am writing to voice my concerns over steroids given to racehorses. From my experience when a racehorse finishes its racing career it takes a long time for the horse's body to rid itself of steroids. Horses drop weight are fractious and have a difficult time adapting to the quieter life. Steroids are basically harmful to the animal and should not be administered unless required by the vet. I have also noticed the same with quarter horses at the sales. They are so pumped full of steroids that you get them home and immediately they drop off to nothing and it takes a long time for them to get right. I am sure with racing and also with human athletes that steroids give an unfair advantage and the performance is not true to that individual or animals ability. Steroids are wrong for people and animals.

Elizabeth [REDACTED]

2/26/2008

Edward Whitfield

From: "Christine Picavet" <[REDACTED]>
To: [REDACTED]
Sent: Tuesday, February 26, 2008 11:32 AM
Subject: steroids

Dear Congressman Whitfield,

Anabolic steroids have no place in horse racing. Horsemen have transformed an occasionally useful therapeutic remedy into an abusive and performance enhancing drug. Steroids are abused by stacking several of them to stretch horses beyond their physical limits until they implode.

Veterinarians are as guilty as horsemen and pushy racing executives, especially from the HBPA. They will not police themselves and it is high time that they be controlled with air-tight laws. No giant loopholes for them to exploit!

It is a shame that a ban from Congress is what is needed for horse racing to be forced to do the right thing. Just as it should be to control fraud at horse sales.

This industry is too corrupted to police itself. We can see that by the Sales Integrity Rules which still allows wealthy but naive and trusting newcomers to be fleeced. From racing executives to smallest horsemen, we need federal laws to police the racing industry and protect its players from self-destruction and protect horses under their exploitive dominion.

Next should be a ban on corticosteroids and complete overhaul of state veterinary pre-race exams which are a farce now.

Sincerely yours,

Christine [REDACTED]
equine artist
[REDACTED]

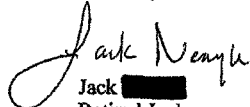
2/26/2008

February 25, 2008

Dear Congressman Whitfield,

I am writing to support you in your efforts for a federal ban outlawing the use of anabolic steroids in Thoroughbred racing. I am a retired jockey who rode Thoroughbreds professionally for 22 years and know of the inherent danger jockeys face when horses are given anabolic steroids. I feel it is very unfair that our equine athletes are forced to receive anabolic steroids and the health and lives of jockeys are put at greater risk because of this situation. Unfortunately, the majority of jockeys who have concerns are not willing to speak publicly because they are free agents and their careers can suffer if they voice their opinions. If other sports are banning the use of these drugs, why should Thoroughbred racing be an exception? I believe the only way to stop the unnecessary use of anabolic steroids is with federal help.

Sincerely,


Jack [REDACTED]
Retired Jockey

859-881-5849 ++ p.1

Feb 26 08 09:45a K&H

02-26-08 08:47am From: Doyle, Restrepo, Harvin & Robbins, L.L.P. [REDACTED]

T-025 P.002/002 F-428

DOYLE, RESTREPO, HARVIN & ROBBINS, L.L.P.
attorneys at law

[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]

Tom [REDACTED] Of Counsel

Telephone [REDACTED]
Telecom [REDACTED]
[REDACTED]

February 26, 2008

Congressman Whitfield
2411 Rayburn House Office Building
Washington, DC 20515

Via Facsimile [REDACTED]

Dear Congressman Whitfield,

I'm a strong believer in a federal law outlawing the use of steroids on racehorses. Their situation is more egregious than humans because the administration is involuntary.

A federal law of prohibition is required to protect the systems of the animals. Unlike humans, their participation is strictly involuntary.

I join you in seeking federal help.

Yours truly,
Tom [REDACTED]
Tom [REDACTED]

TPA/sa

cc: Arthur [REDACTED]

Via Facsimile [REDACTED]

Edward Whitfield

From: [REDACTED]
To: [REDACTED]
Sent: Monday, February 25, 2008 3:32 PM
Subject: Drugs in sports

Mr. Whitfield

I am writing you in full support in ridding our great sport of all drugs in horseracing. Stopping the anabolic steroids as well as all joint injections is imperative to the survival of horseracing, the safety of our horses and jockeys.

Sincerely
Gary [REDACTED]
Sent from my Verizon Wireless BlackBerry

2/25/2008

Edward Whitfield

From: "Joe [REDACTED]"
To: [REDACTED]
Cc: [REDACTED]
Sent: Monday, February 25, 2008 6:27 PM
Subject: Steroid Use In Race Horses

Dear Congressman Whitfield,

I understand that you are supporting a federal ban on the use of steroids in race horses. As a race horse owner and breeder, I fully support you in this effort. This type of action is long overdue and in order to preserve the integrity of racing it is important to stop this practice. Thank you for your leadership in this effort and please contact me if I can help in any way.

Sincerely,

Joseph [REDACTED]

2/25/2008

Edward Whitfield

From: "Alfred [REDACTED]"
To: [REDACTED]
Sent: Monday, February 25, 2008 6:15 PM
Subject: horses & steroids

Dear Ed,

I fully support anything that you can do to help rid the thoroughbred industry of the indiscriminate use of anabolic steroids in the preparation for sale, sale and racing of thoroughbred horses except as needed therapeutically and prescribed by a licensed veterinarian. As a breeder and an owner, I do not believe in using anabolic steroids because there is nothing that is beneficial long-term to the animal and a lot that is detrimental. The betting public that supports our industry through the betting windows deserves a level playing field devoid of "juiced" horses. Any help that is available from the federal system is welcome as long as it does not overburden the industry with beauracracy and red tape.

Thank you for your consideration.

Alfred [REDACTED] Jr.
[REDACTED]

2/25/2008

Edward Whitfield

From: "Josephine Abercrombie" [REDACTED]
To: [REDACTED]
Sent: Tuesday, February 26, 2008 4:49 PM
Subject: ANABOLIC STEROIDS

Dear Ed,
I want you to know that I support you in your efforts to rid our industry of anabolic steroids. This is not the way we should handle our horses and it's long been a problem. If there's anything more I can do to help please let me know.

Sincerely,
Josephine

Josephine [REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]

2/26/2008

Mr. RUSH. The Chair recognizes himself for 5 minutes of questioning of this first panel.

Let me just indicate that we have 5 minutes, and so I am going to go down the line and I am just going to ask questions and ask that you give me a yes or no answer. So, to the best of your ability, please just answer with a yes or no response.

Starting with Mr. Selig, Mr. Selig, do you support Federal legislation that would promulgate rules and regulations requiring professional and amateur sports associations to adopt the Mitchell Report recommendations?

Mr. SELIG. I can only speak for my own sport, and the answer is yes.

Mr. RUSH. Mr. Fehr?

Mr. FEHR. We believe the matter ought to be handled in collective bargaining. I am not in a position to respond for any other sport.

Mr. RUSH. Okay. For your own individual sport.

Mr. Stern?

Mr. STERN. We believe the matter should be handled by collective bargaining between the players and the association.

Mr. RUSH. Mr. Hunter?

Mr. HUNTER. I adopt Mr. Stern's comment.

Mr. RUSH. Mr. Goodell?

Mr. GOODELL. Yes, we do. We believe, as I stated in my testimony, that we are doing the vast majority of the recommendations the Senator made.

Mr. RUSH. Mr. Upshaw?

Mr. UPSHAW. I agree to the extent that it should be through collective bargaining.

Mr. RUSH. Mr. Bettman?

Mr. BETTMAN. I believe this should be a matter of collective bargaining, especially because the Mitchell Report was focused on one particular sport and did not have the benefit of looking at the practice and history of the other sports.

Mr. RUSH. Mr. Kelly?

Mr. KELLY. No.

Mr. RUSH. Mr. Kelly, I will start with you. If you don't believe in mandatory legislation, do you believe that all of the recommendations of the Mitchell Report should otherwise be adopted by your Leagues?

Mr. KELLY. Is that a yes or a no again?

Mr. RUSH. Yes or no.

Mr. KELLY. Qualified yes.

Mr. BETTMAN. Subject to its applicability to each sport.

Mr. RUSH. Mr. Upshaw?

Mr. UPSHAW. Subject to collective bargaining.

Mr. RUSH. Mr. Goodell?

Mr. GOODELL. Mr. Chairman, again, we believe that we have adopted most of the vast majority of all those recommendations.

Mr. RUSH. Mr. Hunter?

Mr. HUNTER. No.

Mr. RUSH. Mr. Stern?

Mr. STERN. No.

Mr. RUSH. Mr. Fehr?

Mr. FEHR. Senator Mitchell recognized that even his recommendations, which were general in nature, would need bargaining to implement. We will be discussing them. I will be in a position to give you a very precise answer before too much longer.

Mr. SELIG. Certainly, through collective bargaining is the proper way to go, but, obviously, I have very strong feelings that this would be in the best interests of baseball.

Mr. RUSH. Okay. The next question for all the panelists, assuming that a reliable blood test can be developed for HGH and assuming that it can be administered without adversely affecting the performance of the athlete, do you support the policy of blood testing for HGH?

I want to just note that Derek Jeter recently publicly stated his belief that players should be tested for HGH and that since all players get blood work every year anyway it is not a big deal to test for HGH.

Mr. Selig, let's begin with you. Would you answer that question with either a yes or a no.

Mr. SELIG. Well, I wish I could answer it by yes or no. I have been on record as supporting it, but we are a ways away. I hope that a urine test will come first. You know, there are significant problems in the development of it. But let me say to you if at the end of this long process that's the only way we can deal with HGH, then the answer is yes.

Mr. RUSH. Mr. Fehr?

Mr. FEHR. What we have indicated is, if a valid test is developed, we will take a hard look at it. I want to reaffirm that commitment today. You would need to look at the potential effect on performance but also on the health and sanitary conditions that would be necessary to surround any such test. They are fundamentally different in that respect to urine tests.

Mr. RUSH. Mr. Stern?

Mr. STERN. No.

Mr. RUSH. Mr. Hunter?

Mr. HUNTER. No.

Mr. GOODELL. Mr. Chairman, if there is a valid test, we will certainly consider that. We certainly want to make sure it is effective, practical and safe for our players.

Mr. UPSHAW. No.

Mr. BETTMAN. To the extent that there is no other alternative but there is a reliable blood test for HGH and that's the only way to detect it, then yes. Short of that, no.

Mr. KELLY. I would agree with Mr. Bettman's statement.

Mr. RUSH. I will get this one in. Assuming the accuracy of the test, do you support saving urine samples in order to retroactively test for, quote, designer steroids, end of quote, that are accurately—or that are currently undetectable but may be detectable in the future?

Mr. SELIG. Chairman Rush, I have been told by our experts—one of them, Dr. Green from UCLA, is sitting behind me here today—that this would not be possible and they don't believe that it would be valid.

Mr. FEHR. My understanding is that there are significant scientific reliability questions that would attach to that. You would have to look at the system.

Mr. STERN. No.

Mr. HUNTER. No.

Mr. GOODELL. We would also agree that the science seems to indicate there is a great deal of controversy in the integrity of those samples.

The other practical problem we have is we conduct 12,000 tests per year.

Mr. RUSH. Mr. Upshaw?

Mr. UPSHAW. I agree with the Commissioner.

Mr. BETTMAN. No.

Mr. KELLY. No.

Mr. RUSH. That concludes my time.

The Chair now recognizes the ranking member for 5 minutes.

Mr. WHITFIELD. Thank you, Mr. Chairman.

I also want to thank the witnesses for being with us today. We genuinely appreciate your opening statements and welcome your experience in this very important issue.

Mr. Selig, in the Mitchell Report, which has already been stated related only to baseball, he focused now on the independence of the testing mechanism, and he called for greater independence. And yet I believe that baseball feels like you already have an independent testing in place. Is that correct or not correct?

Mr. SELIG. Well, we do feel that we have it, but he makes recommendations that would increase its independence and its transparency. We are in the process of talking to the Players Association and collectively bargaining the remaining six or seven things which deal with that issue. I believe if we adopt all of the Senator's recommendations in that area that we really—that really does guarantee us an independent program; and I think Dr. Smith, who is our administrator, would agree that at that point he really does have independence. But we need to finish it off and adopt his recommendations.

Mr. WHITFIELD. When he says "transparency" what is he actually referring to when he says it's got to be transparent?

Mr. SELIG. Well, I think the transparency of the program and things that go on. I think he believes that increases the trust—the public trust and internal trust—and I think if you take a look at his recommendations they do. They increase both the transparency and the independence.

Mr. WHITFIELD. But I take it there are some issues with the players themselves; and so you, Mr. Fehr, are having discussions about that. Is that correct?

Mr. FEHR. Senator Mitchell recognized I think pretty clearly in the Report that the current agreement calls for independent administration and that we have allowed that individual to act independently. We haven't rejected any of his recommendations. And he also said the precise form of any amendment would be best left to bargaining. We are in discussions on that. We have a proposal. We will be discussing it with the players, along with the other issues that are there.

Mr. WHITFIELD. And all the test samples, my understanding in baseball you have two labs that you use. Is that correct?

Mr. SELIG. That's correct.

Mr. WHITFIELD. And one is in Canada?

Mr. SELIG. We use the two Olympic labs, the WADA labs, one at UCLA and one at Montreal.

Mr. WHITFIELD. Okay. That's right.

And in the other sports do you also use only two labs or do you use more than two or—in hockey, Mr. Bettman?

Mr. BETTMAN. We use the WADA lab in Montreal.

Mr. WHITFIELD. Montreal.

Mr. Goodell?

Mr. GOODELL. Excuse me, we use the UCLA facility and the Utah facility, which are both approved by WADA.

Mr. WHITFIELD. And the Utah facility as well?

Mr. GOODELL. Yes.

Mr. STERN. We use the WADA-certified laboratory in Montreal.

Mr. WHITFIELD. So all of the sports are basically using the same labs, which I think probably speaks well for that.

Mr. Selig, one other question I wanted to ask you, you mentioned this Partnership for Clean Competition and relationships with other sports on this. Would you elaborate on this partnership?

Mr. SELIG. The Partnership for a Drug-Free America? Is that what you are—

Mr. WHITFIELD. My notes said Partnership for Clean Competition. Maybe it's—

Mr. SELIG. That is the USOC effort. I am sorry. That's the USOC effort with the National Football League. We certainly have engaged in an effort to increase not only the knowledge about testing, but about everything else related to performance enhancing substances. And so that, along with all the other things that we are doing, the Partnership for a Drug-Free America, the Hooton Foundation, which incidentally came out of this hearing—I remember hearing Mr. Hooton talking about what had happened to his son—so that's really a grassroots program. And then we joined with the USOC and the Partnership for Clean Competition. I think we are doing the things that people have asked us to do.

Mr. WHITFIELD. Okay. Mr. Upshaw, would you mind, if I am a football player and I have been accused of using illegal drugs through testing, briefly explain the appeals process that would be available to me.

Mr. UPSHAW. Well, the appeals process allows a player to see whether test results in an "A" bottle is confirmed in a "B" bottle. And the "A" bottle is the one that will reveal the positive test. The player has a right to come in and test the "B" bottle with his own people, someone that is not affiliated with our program, just to see the test is confirmed with the "B" bottle.

Mr. WHITFIELD. Does he ultimately have a right to go into the courts?

Mr. UPSHAW. No.

Mr. WHITFIELD. Does not?

Mr. UPSHAW. No.

Mr. WHITFIELD. Okay. Thank you.

Mr. RUSH. The Chair now recognizes the vice chairman of the subcommittee, Ms. Schakowsky, for 5 minutes.

Ms. SCHAKOWSKY. Thank you.

I wonder if you could just each briefly tell me what you tell your kids or grandkids when yet another story breaks about another star athlete using some kind of performance-enhancing drug, particularly if it is in your sport. Why don't we start on this end this time.

Mr. KELLY. Again, as I mentioned in my opening remarks, we have been fortunate in professional ice hockey not to have had a significant problem. Although I do have four children, and I guess in response to your question I would say that, you know, effectively what is going on there is a couple things. One, it is cheating. Two, it is jeopardizing the health. That person is jeopardizing his or her health by using those substances. And, three, obviously I counsel my kids to never consider not only performance-enhancing drugs but any type of illegal substances.

Mr. BETTMAN. I have three children, and for the reasons that Mr. Kelly has just articulated, I have consistently told them that it is unacceptable.

Mr. UPSHAW. I also have three children, and they know very well how strongly I feel about cheaters and how we all feel about cheaters in the National Football League. We stress that there is no shortcut to victory and to success, and we carry it even farther. Many of our players, through their efforts try to educate the public that there is no room for cheaters and there are no shortcuts and you can't get there by using performance-enhancing substances.

Mr. GOODELL. My comments are based on two levels. First off, there are very serious health consequences to take any performance-enhancing drugs and other drugs; and I make that very clear. Second would be the importance of competing within the rules. And if you don't do that, there are consequences for doing that.

Mr. HUNTER. My three children are adults. I have a 6-month-old grandson. So maybe I will eventually get to the place where I have to talk to him about it.

But our general position is that the use of steroid and performance-enhancing drugs are prohibited. And I don't know if you are aware, we have an individual, Alonzo Mourning, who had a kidney transplant. And several years ago, when Alonzo experienced his illness, he and another player, Shaquille O'Neill, spoke out very adamantly about the use of steroids or any other drugs. And, in that instance, it was a case of players having to use anti-inflammatory drugs—or medications, rather—that were prescribed by physicians. And the players tended to relate or associate the side effects with those medications. So, consequently, I think if there was a tendency on the part of any player in the NBA to want to use performance-enhancing drugs and/or steroids, that for the most part nullified it.

Mr. STERN. Both of my adult sons are educated as lawyers, and I emphasized to them that we can't get lost in the rush here with respect to recognizing the rights to some intelligent due process for the players who are tested and that these samples have to be well tested. And that basically of the last 4,000 tests that were done since our new procedures in 2005, there has only been one test

where a player was suspended, even though he accidentally took a pill that was there for his wife in a diet supplement.

Mr. FEHR. Ms. Schakowsky, I think either you or Representative Blackburn asked me this question 3 years ago; and I think my answer is about the same. First thing is you tell them the truth. Second thing is you tell them what the law is. The third thing is, and to me the most important advice that I give, is you don't take anything, lawful or unlawful, that is a pharmaceutical without it being done under a doctor's care. There are very severe health risks. And the last thing is that all kids today, especially in high school and college, just like it was when I was there 40 years ago, are subject to a lot of peer pressure and they are subject to an enormous amount of advertising and availability of product and they have got to be really careful and they have got to be really vigilant.

Mr. SELIG. I have three daughters and five granddaughters, so I guess the answer is simple. The health consequences are so devastating that they certainly are the first things that one should explain not only to their children and their grandchildren, but to people in the sport.

Two, it clearly affects the integrity of the sport in every way. So the damage that performance drugs do manifests itself in so many different ways, and there should never be any misunderstanding about that.

Ms. SCHAKOWSKY. Thank you. It just does seem as if we are making progress, and yet the advantages of being a star player it seems for some kids still is outweighing the costs to them. And, you know, we have to continue to look for ways to do better among our professional athletes who are still the role models for our kids. But I thank you for all those comments.

Mr. RUSH. The Chair recognizes the ranking member of the full committee, Mr. Barton, for 5 minutes.

Mr. BARTON. Thank you, Chairman Rush.

I am reminded of the movie Casablanca, where at the end of the movie Humphrey Bogart is out at the airport and the German Gestapo officer comes and tries to arrest him, tries to stop the plane, and Bogart says, don't touch that phone. And, of course, the officer does, and so Bogart shoots him. And then Claude Rains arrives on the scene and looks at Bogart, and Bogart has got the gun in his hand and, you know, Bogart knows that if Rains does what he is supposed to do as the French Police Commissioner that he will be arrested. But Claude Rains says the famous line, "Round up the usual suspects".

Well, we got the usual suspects here. We did this hearing 3 years ago. Most of you gentlemen—I don't remember everybody by name, but most of you were here, and we on a bipartisan basis developed a bill that passed the subcommittee, the full committee, and was discharged to the floor, but it didn't get a vote on the floor of the House and it didn't come up in the Senate.

Last time as this time, another committee held hearings with star players and got all the headlines, and this committee moved the bill that didn't become law.

So we are in a similar situation. We have all the commissioners and the Players Association reps. My question, since most of the problem apparently—I don't want to pick on baseball, but it ap-

pears that you guys have got more of the problem. Mr. Selig do you—and Mr. Fehr on behalf of the Players Association—do you all support Federal legislation, a Federal legislative solution or do you prefer another voluntary testing program?

Mr. SELIG. Well, as I said in my statement, Congressman, there are four or five bills here that deal with the problem that we would not only support but support aggressively. I believe that our history the last 4 or 5 years has shown that the collective bargaining process has worked. We have come a long way since that hearing that we had both at the Major League level and at the Minor League level and with all the other things that we are doing. But there are four or five bills that I believe would be—

Mr. BARTON. But you do—the owners support a Federal legislative solution? Is that—

Mr. SELIG. There are four or five bills here that we would support, yes.

Mr. BARTON. What about you, Mr. Fehr?

Mr. FEHR. As I indicated in my prepared testimony, a number of the pieces of pending legislation may well be worth consideration, whether it is making HGH schedule 3 or limiting the sale of DHEA to minors or prohibiting it to minors. I don't believe it is necessary for purposes of an overall program. I think the Mitchell Report demonstrates that, with respect to substances which can be detected, that we have got a handle on that now.

Having said that, let me repeat something I said in my opening statement. HGH is a problem because for a whole host of reasons it can't be detected, or can't be detected easily, or can't be detected with testing which is available. If the Congress could consider requiring that some sort of chemical marker be added to prescription HGH, which is manufactured by the pharmaceutical companies, so that it would be detected in urine, that might well go a long way toward solving a lot of problems.

Mr. BARTON. Okay. Let me ask a question of the chairman, Mr. Rush. Is it your intent, if the hearing shows consensus, to move a bill?

Mr. RUSH. It is my full intentions to move a bill. A bipartisan bill, I might add.

Mr. BARTON. Okay. Let me ask the other Major League sports, are you all also supportive of a Federal piece of Federal legislation? Or is there anybody that's not? Anybody that's not?

Mr. Upshaw, you got ready to say something.

Mr. UPSHAW. Well, I believe that this whole area should be dealt with in collective bargaining. That is the proper forum to do it. I don't see how legislation would be effective, because each of our sports, everything we do is all so different. We have handled it this way. We will continue to handle it this way.

And when it comes to performance-enhancing drugs or substances, it is never a subject of trading one thing for another. It is something we want out of the game, something we started to get out of the game in 1987 and will continue to do so in the future. If there is a new substance that comes on, we will add it to our banned list.

We totally agree. The players totally support the program that we have in place, and I would hate to see us move in a direction that would take that confidence out of what we are already doing.

Mr. BARTON. We will work with the sport. You know, we can fine tune the bill for each professional sport, but I would hope—Mr. Chairman, I am going to yield back—but I would hope—let's get it right this time, and let's try to get our friends in the Senate and the President on board so that, instead of just getting it through this committee, let's go ahead and get something into law that is acceptable. It is no fun having this hearing every 2 to 3 years when we have another scandal. So let's try to get it right.

And I would certainly be willing to cooperate would you and Mr. Dingell to try to craft a piece of legislation that meets the standard of the interest groups and yet protects the integrity of the sports.

And with that I am going to yield back.

Mr. STERN. Mr. Chairman, I would like to add that, actually, based upon the statements and the testimony here, the sports leagues have pretty much gotten it right in the intervening 3 years. What we have heard described here is a series of random testing, WADA-approved laboratories, independent drug testing, and long lists of prohibited substances added to by independent commissions that have happened since the 2005 hearings, which I was privileged to participate in.

Mr. STERN. So, actually, I think you have gotten it right. And I think also the sports leagues have gotten it right. And despite all of the public attention that was given to other committee hearings, they were dealing with facts that were relevant to years like 1998 to 2001. There is a very different story here, and so I would say that this is an area where Federal legislation is not necessary. And on behalf of the National Basketball Association, I would urge that it be allowed to be bargained out between committed parties, all of whom at this table have stressed their commitment to the committee to make sure that it is improved up to and including and asked by—to the committee of making HGH detectable in a urine test rather than requiring players to go through blood tests, needles and the things that might be of a valid concern. Thank you.

Mr. BARTON. We will certainly work with everybody.

And again, thank you, gentlemen, for being here.

Mr. SELIG. Congressman, I said in my statement, there are four bills that—Representative Lynch's, Senator Schumer's, Senator Grassley's, and Senator Biden's—that deal with it. This is a societal problem. Those bills we would support because they do deal with the genesis of this problem in every way. But, other than that, I agree with Commissioner Stern. I think that the last 4 or 5 years have proved that the collective bargaining process has worked well and will continue to work well.

Mr. BARTON. Thank you, Mr. Chairman.

Mr. RUSH. Thank you.

The Chair now recognizes the gentle lady from Tennessee, Mrs. Blackburn, for 5 minutes.

Mrs. BLACKBURN. Thank you, Mr. Chairman.

And again, thank you to each of you.

Mr. Stern, I would suggest that we have not gotten it right enough in the past 3 years. If we had gotten it right—if you all had

gotten it right, we would not be here again today. But we need to start looking at what we are going to do proactively. And I think that that is—we appreciate the strides that you have made. The setting here in this room is much better than it was 3 years ago. But sir, with all due respect, I think what we need to know is what you all are doing at the grassroots level. What are you doing with these new recruits that are coming out of college? What kind of interface is there? How are you going to get in front of this? You know, everything that we are discussing today is reactionary. And what we need to do is begin to turn this page and say, on a proactive basis, what are you all going to do? And you have the ability to do that. And your actions are going to speak louder than your words.

And obviously you all have been very well coached. We have got about three rows of lawyers behind you who are here to help you through this process as you try to come in front of us. So you all have been very well coached. And I don't know if you have a players union for that. But anyway, we appreciate that you are trying to work with us through this. But you know, let's begin to get it—to get on the proactive end of this and to try to get a little bit further down the road with this and be aware of the message that this is sending. Congress has to take its time to come in and work on this. And even though there is legislation that you all would support, the fact that we are having to do this, that it has to take an act of Congress rather than you all policing it yourselves, so let's let's try to turn that around.

Mr. STERN. With all due respect, Congresswoman Blackburn, if you look at the statements that have been submitted here but we haven't burdened the record with regurgitating them, the amount of grassroots opportunities that all of us participate in from the Partnership For a Drug-Free America to the videos that we distribute to the schools to the week-long coaching that we do to our rookies, the amount of work that is done by the table here, union and management alike, is very extensive. And it is contained in the voluminous uncoached record which has been prepared in 2003, in 2005, in 2008. And we would be happy to submit yet additional things. So I stand by my original statement that enormous progress has been made, coached in some significant part by Congressman Stearns's chairmanship, Congressman Rush's chairmanship and the other committees with which we have met. So it would take a longer time without coaching to go through the voluminous things that we do that fit exactly the strictures that you would like us to do. We do it. We can always do more, and I think I have heard commitments here that we will do more. But I am happy, as the senior member here in terms of length of service, to say I am proud to be here at the table with my uncoached colleagues who are dealing extensively on this subject.

Mrs. BLACKBURN. Well, and we appreciate those. We hope the next time if we are—you all are before us again, that we are dealing more on the proactive end and not on what we are doing on the back end to clean up a problem, but what we are doing to prevent it from having become a problem in the first place.

And, sir, that is the area where we need to be shifting our focus.

Just a couple of questions that I want to have. I have less than a minute.

And Mr. Fehr, I may submit my questions. But I did want to come to the Mitchell Report recommendations that you all have not implemented but that have to go through the negotiating, the collective bargaining and renegotiating process. Which specific recommendations are you prepared to recommend that your association accept?

Mr. FEHR. Representative Blackburn, there were seven general categories of recommendations which Senator Mitchell identified as being susceptible to collective bargaining. There may be a couple others. They have to do with independence transparency; adequate year-round testing flexibility; appeal rights and due process for players; and to a certain extent, funding. We have already opened discussions on those. I will be discussing those with players. I won't make recommendations to the players until I have a specific agreement that I can say, this clause on this issue I am prepared to recommend or not recommend. Because of the off-season and the inability to contact players—and we do something I am sure you are very familiar with, we do retail politics—we have to see everybody, and I haven't had the opportunity to do those discussions yet. Down the road, I hope that those questions will not only be answered but answered satisfactorily and not before too long.

Mrs. BLACKBURN. So you don't have any specifics at this point?

Mr. FEHR. No. Not that I am prepared to talk to today.

Mrs. BLACKBURN. Thank you, sir.

Mr. RUSH. The Chair now recognizes Mr. Stearns for 5 minutes.

Mr. STEARNS. Thank you, Mr. Chairman.

Mr. Bettman, when these original hearings started, I don't think you had a drug policy at all as I recollect. So now you do have one in place?

Mr. BETTMAN. Well, we had a drug policy dealing with the substance abuse drugs, more recreational drugs.

Mr. STEARNS. Right.

Mr. BETTMAN. I believe the last time we were here it was just during or after a lost season due to a work stoppage.

Mr. STEARNS. Right. I understand. Do you know what the policy is at the NFL or the NBA?

Mr. BETTMAN. Sure.

Mr. STEARNS. Mr. Upshaw, do you talk to David Stern at all about his drug policy and what it is? I mean, do you have your counsel call his counsel and say, "look, this is what we are doing, we are having three strikes"?

Mr. UPSHAW. Actually, I talk to Billy Hunter. I don't talk to David. I think I would have a more productive idea of what the players are doing. I know where Mr. Stern will be. So I interact mainly with the executive directors of the other unions.

Mr. STEARNS. I think what I am, as I said in my opening statement you know before we drop a bill, my preference would be to see you folks come up with a standard transparent and consistent policy patterned after what they do in the Olympics. Now the Olympics has all different kinds of athletes, so obviously you could make the same argument. Is there any objection to you folks having the same policy, which is like the Olympics? I mean, any one

of you? Or do you feel, Mr. Upshaw, that yours is comparable to the Olympics?

Mr. UPSHAW. Well, we feel that our program is better than the Olympics in many ways. And I think we do what we feel is best for the players in the National Football League. That is why it is so difficult when you try to legislate or try to get conformity and everyone to agree because, as we talk about these issues, they are so different. Every sport is so different. Every season is so different.

Mr. STEARNS. But every Olympics—

Mr. UPSHAW. But they don't have a union over there either. So that is a big concern of mine. I think if they had a union, they might look a lot different. And I don't ever tell Don Fehr what is best for the baseball players.

Mr. STEARNS. No. I understand.

Mr. UPSHAW. And I have to trust his judgment and his players. What I have to do is represent the NFL players and—

Mr. STEARNS. Mr. Fehr, is there any reason why the Players Association couldn't accept the standards that the Olympics—

Mr. FEHR. What we have an obligation to do is to bargain standards that we believe are appropriate and fit with our sport. I think that people will be able to make their own judgments as to whether it is effective.

Mr. STEARNS. I am coming to that. It is not the question I am asking you.

Mr. FEHR. There are some differences, for example, which cause us and cause me some real problems. Where you have a circumstance in which, for example, the Congress of the United States decides that certain substances as a practical matter are legal and may be purchased and may be purchased by children, then it is hard to go back to the players and say, "it is legal here, but for some reason you can't do it." There are differences. That is why we—that is why our prohibitive substance list is pegged to U.S. law.

Mr. STEARNS. So, at this point, you could not adopt the Olympic standards for the Players Association?

Mr. FEHR. Not in that regard, no.

Mr. STEARNS. Not in that regard. Okay, I guess Commissioner Selig, what steps have you taken to find a significant reliable test to screen for HGH, the human growth hormones?

Mr. SELIG. Well, I think we have done, frankly, as much as anybody. We started funding a program with Dr. Catlin at UCLA, or when he was at UCLA. The National Football League joined us in that. So he is very hard at work. Everybody told us he was the right person to go to, best in the country. So we have done that. And we will continue to fund that until hopefully he comes up with a test.

Mr. STEARNS. Mr. Stern, NBA, have you folks addressed this or looked at this or are concerned about the testing for HGH?

Mr. STERN. Yes. We have made a substantial pledge to the—what is it called? The clean competition, the committee—together with the USOC, and I know Major League Baseball and the NFL. So we are actively engaged in trying to get a better test, a reliable test.

Mr. STEARNS. Right, because right now, none of you have a reliable test. That is true?

Mr. SELIG. There is no reliable test.

Mr. STEARNS. Nobody does. So if professional athletes were using this today, there would be no way to detect it, and most likely, it is probably a case where athletes are probably using it today.

Mr. GOODELL. Well, Congressman, let me address that, because we are a league that suspended four of our individuals, three players and one coach, for use of HGH which was detected through law enforcement, in fact, and our cooperation with law enforcement. So there are other ways of being able to detect it. It is certainly a big issue for us. We would support testing. We have done that financially along with many of the other sports up here.

Mr. STEARNS. Have you talked to the Olympics? I understand they have attempted, and they actually test athletes for HGH. They seem to think they have some kind of test. So the question is, if they are testing, why aren't the professional sports testing?

Mr. GOODELL. Let me try to address that.

Mr. STEARNS. Why don't you talk to the Olympics and say, "look, what are you doing? Let's test the way you are doing, at least start it."

Mr. GOODELL. We have talked to the Olympics. In fact, we think, in fairness to your earlier question, we think we have gone beyond the Olympic standards. We test far more individual athletes than the Olympics do at this point in time. We have been doing it for over two decades. We do 12,000 tests a year, and I believe that we work with WADA and USADA to determine any new changes in technology, science that can help improve our program, and we have made changes along the way to improve that. And I think we have done that very effectively.

Mr. STEARNS. Thank you, Mr. Chairman.

Mr. RUSH. Mr. Selig, do you want to respond to that?

Mr. SELIG. I was just going to add to that, not only have we supported the work with Dr. Catlin but, with the other leagues, and with the USOC we are involved in the Partnership for Clean Competition. But the thing that I keep hearing, Congressman, over and over, there is a test for HGH, and they use it in the Olympics. That is not so. They took tests. They have never released the results of that test. Nobody knows where it is. And there is not a test today for HGH.

Mr. RUSH. The Chair now recognizes the gentleman from Nebraska, Mr. Terry, for 5 minutes.

Mr. TERRY. Thank you. I appreciate that, Mr. Chairman. I have the pleasure of representing the home of the College World Series, and it is going to stay that way. There is a little issue with that, but—

Mr. FEHR. Mr. Brand is on the next panel.

Mr. TERRY. I have to get it in continuously. It is about repetition.

Mr. Chairman, you rightfully called out Vince McMahon. You know, someone that flips his finger at this committee or at Congress deserves to be called out. On the other hand, we have a really esteemed panel. And in my personal opinion, Vince McMahon does not belong at this table with these people.

So let's move on to the issue at hand. And I am a laissez-faire, hands-off type of guy. That is economy, and that is legislation. To put my philosophical reference or beliefs and lay it over the issue at hand, it means that I do believe each sport should handle it themselves. And when you were in here 3 years ago, you said we would do it by collective bargaining. I have seen progress in that. So I do appreciate that you are addressing it. Let me be clear though, if we can't elevate the level of testing and rid sports of the steroids, the performance-enhancing drugs, if we can't rid professional sports of that, then I don't think we have much of a choice but to come in and set the standards for you.

So, Mr. Fehr, take that back to your players because, frankly, baseball has been the focus—maybe rightfully, maybe wrongfully. But it appears to the normal sports fan that it has been the baseball players that have dragged their feet and really created this issue. That is just a personal observation. I am a sports fan. I listen. And so baseball has put themselves in a position where they have to take more of a lead, set the bar much higher to try and correct the perception about cheaters in baseball.

And Mr. Selig, in your statement, one quote really stood out to me. Marsha, my colleague from Tennessee, hit on it. But the quote is, "I have adopted all of the Mitchell recommendations that can be accomplished without collective bargaining." Can you quickly just go through what you can do unilaterally and what has to be done by way of the Mitchell Report by collective bargaining?

Mr. SELIG. Well, what has been accomplished, Congressman, up to this point, and what we have done, we have established an independent Department of Investigations; two of our people are here today. We require club officials to certify that they have reported information of performance-enhancing substances. We had some experience, which was unfortunate, with packages being sent to the Major League clubhouses. We now conduct background checks on clubhouse personnel. We drug test clubhouse personnel. We have established a hotline for reporting anonymous tips, and we have clubhouse posters and a rather significant educational program there.

Now, the things that we are still bargaining collectively go more to the independence and the transparency. And I think, once we do that, we have really tightened up our program. But we have not—those are—

Mr. TERRY. What did you say? The independence? I am sorry. I couldn't hear you.

Mr. SELIG. I am sorry. The other proposals deal with independence and transparency.

Mr. TERRY. Independence means what?

Mr. SELIG. Independence of the program, the program. The administrator—in other words, you would give the administrator full administrative authority, hired for a longer term. He can really be dismissed only for violation of explicit provisions of the drug agreement. The whole point of those Mitchell recommendations was to increase the level of independence. And I think, if we do all those things, I am very satisfied that any objective person will say we have really tightened the program. And that is what is under discussion now.

Mr. TERRY. Mr. Fehr, any resistance from the players?

Mr. FEHR. As Senator Mitchell pointed out and as I indicated in the response to a question from one of your colleagues, Senator Mitchell's recommendations were extraordinarily general. You have to look at the specifics. And he did specifically indicate, for example, that the precise form of a given recommendation would have to take account of collective bargaining. We will be discussing all those recommendations. We have already begun them with the Commissioner's Office, discussions with the players. We can't really start until actually tomorrow when I can get down to Florida. We couldn't do it off-season because we can't find everybody. And in response to your prior comment, I appreciate it is a personal observation. But I think you can, from my experience, count on the fact that the players pay attention to these hearings.

Mr. RUSH. The Chair now recognizes the gentleman from Texas, Mr. Burgess, for 5 minutes.

Mr. BURGESS. Thank you, Mr. Chairman. You know, it is fair. I agree with you; people do pay attention to the hearings. But a lot is written in my local press back home about—not the hearings in this subcommittee but the hearings in the other subcommittee. But, again, let me stress that this is the Legislative Subcommittee. This is the committee that has the obligation to do something if indeed something needs to be done. And I believe it does. And I think I have heard that sentiment from all along the table today—well, almost all along the table today. And I am appreciative of that because I think it is important.

Mr. Fehr, you indicated that we have got a handle on the problem.

Mr. FEHR. I am sorry. I didn't hear you.

Mr. BURGESS. You indicated in one of your answers to another question that we, you and the Players Union, have got a handle on the problem. I hope you are correct. I am not certain that you are. And, again, as I said in my opening statement, this is a hearing that really should be focused on the future, not what has happened in the past. There is no point in revisiting the stuff that has already been revisited. But I have an article here from the Boston Globe from February 19, so it is fairly current. And in this article, the estimate is that 3 to 6 percent of students nationally have tried anabolic steroids. So, at a minimum, that is hundreds of thousands of high schoolers. So that is a big problem for us. And then they go on to say a recent report by the Oregon Health and Science University using data from the CDC said that over 5 percent of teenage girls admitted to using anabolic steroids, mostly for body-enhancing reasons or self-protection, not athletics. And also according to data from the Centers for Disease Control in 2003, seventh grade girls were the fastest growing group of steroid users with more than 7 percent using them. So, again, it is a big deal. And this article is actually dealing with two teenagers and has significance for me because they are both from Texas. Dionne Roberts, who is the focus of the article, used anabolic steroids until it drove her to a suicide attempt. And just down the road at a Plano High School, a young man named Taylor Hooton actually did commit suicide, and his dad Don Hooton has been here to testify before our

committee in the past and has been a very outspoken advocate about us doing something to turn the tide on this.

From an article in the Fort Worth Star Telegram back home in Texas, and this is actually from today's paper, by Linda Campbell. The article ends up: Pressures to get bigger, faster and stronger to gain an edge are inherent in competitive sports in all levels. As long as performance enhancers are accessible to the pros without sufficiently serious penalties, they will trickle down to amateurs.

And then, again, I reference back to this rather disturbing data from the CDC and Oregon Health University about the numbers of teenagers who are using these. So I guess what concerns me is that the kids see that it is okay because their heroes are using these compounds. It is not important for us to beat up on someone who may or may not have used this or may or may not have been truthful on a national news program. What is critical for us to get right is that we put the parameters in place so that you all have the tools you need in your self-policing of your sports, your entertainment industry, if you will, and that the correct message—so we don't have the message trickling to our youngsters that it is okay to use these things, that it is a good idea to use these things. But the message trickles down that it is wrong; it is cheating, and it is dangerous to your health. Do you have any comment on that?

Mr. FEHR. I sure do. And I hope you will give me a minute or two to respond. I said in my prepared testimony and in my opening remarks, that this is a society-wide problem, and I think you have put your finger on it, in large part, that it is. Forget high school male athletes. I just don't think it is terribly likely that teenage girls are using steroids because they want to turn into Major League pitchers or to linebackers. There has got to be something else that is going on there.

Where you have a circumstance in which the product seems to be widely available, easy to find, you have massive advertising, you have online sales, you have pharmacies that, according to the press reports, dispense drugs without individual doctors examinations, those are the kinds of things that no matter what we do, that is the environment we can't solve.

Now having—to turn to Major League players, I think the Mitchell Report makes clear that with respect to things that we can detect, we are now detecting them. I don't know anybody that thinks that a player who has been identified as having used a performance-enhancing substance in baseball in the last 2 or 3 years has been subject to anything other than shame and ridicule. And to the extent that that is a helpful message to kids, that is good. We don't have any problem with that. And we hope they get it.

That is not going to do it all by itself. And you picked up a line—and maybe they even picked it up from me—that I used at the January 15 Government Oversight Committee hearing, and I think personally—this is not a statement on behalf of the players; this is simply a personal opinion—that if we maintain a culture in which every time a potential junior high school or high school or potential college athlete goes in to see a coach complete with all the pressures for scholarships and the message is “just not big enough, just not strong enough, you are just not fast enough” and that message is repeated ad nauseam, people are going to look for ways to

get bigger and stronger and faster. By the time they get to the pros, whatever message they have in that regard, they already have. So that is why I suggested in my testimony that we need some help from the Congress in a lot of these other areas. And it is going to be tough. You know, it has taken us 40 years to make meaningful impacts on discouraging tobacco use. But we have to start.

Mr. BURGESS. Yeah. And I appreciate your work in this regard. I do feel obligated—in case anyone is watching this hearing, it does go on to say in the article that this teenage girl developed a very deep voice, and that may not be reversible. So there is another thing to add to the list of reasons not to—

Mr. FEHR. May I say, women are not supposed to have testosterone, that we know.

Mr. BURGESS. Thank you, Mr. Chair.

Mr. RUSH. The Chair now recognizes the gentleman from Pennsylvania for 5 minutes.

Mr. PITTS. Thank you, Mr. Chairman.

Mr. Selig, in your opinion, does the Mitchell Report recommendations go far enough, or is there more that should be done in your opinion?

Mr. SELIG. I think they do. The Senator spent 19 months interviewing thousands of people. I think he really had, in the end, a very good handle on what happened and why it happened. I am really confident that if we adopt all of his recommendations, we will have really strengthened a program that is already working. Now we must remember, we were down to two positive tests in 2006; three in 2007. We have banned amphetamines in the meantime. And by the way, I want to say this again: No one asked us to ban amphetamines. The idea came to me from team doctors and trainers who urged me to do it because they were very concerned about the health ramifications. And so I think, if you take all of that, take all the progress we have made in the last 4 years through collective bargaining and other things, and then you add the Mitchell recommendations onto that, I think that really tightens our program up. And I am very confident to go ahead with that. And I believe, again, when you concern yourself with independence and transparency, I am quite satisfied that these are—

Mr. PITTS. Mr. Fehr, your reaction?

Mr. FEHR. As I think I have indicated in my previous testimony, we had a strong program. We have made regular modifications for it. We have had open discussions on the Mitchell recommendations, and we will see where they go. They all require fleshing out, in terms of an agreement. I don't question the motivation behind them or the ideas behind them. We will be discussing them with the players beginning tomorrow.

Mr. PITTS. Would any others of the panel like to respond to that question? Is there more that should be done? Or does the Mitchell Report go far enough?

I will yield back.

Mr. RUSH. The Chair now recognizes the gentleman from New York, Mr. Fossella, for 5 minutes.

Mr. FOSSELLA. Thank you, Mr. Chairman.

Thank you, gentlemen, for your patience and your efforts. I believe you are all awarded in good faith, so I would urge you to continue to do so. I don't know if you have talked about it earlier, but perhaps, we could shift gears a little bit and talk about—maybe Mr. Fehr provides the segue. By the time the young people become eligible to play, what is happening in high schools, kids that we know are taking some of these steroids and human growth hormones. My understanding is that the rates of that age group are growing higher than any other group. And several States have taken it upon themselves to provide for mandatory testing. Texas, New Jersey. Do you all have an opinion? State Senator Andrew Lanza of New York has introduced legislation modelled after that. Do you have an opinion as to whether there should be mandatory testing at the high school level? And if so, is there a way that Major League sports can help provide for not just education and awareness but also maybe support some of the financing of that testing? Gentlemen? Anybody? How about, if nobody answers, I would assume you all don't like the idea. If somebody does answer—

Mr. FEHR. Let me—I will take a shot at it. Let me say, first of all, you do have, as I understand, the second panel representatives from high school here that may be in a position to respond on an informed basis to those kinds of questions. I am not. And I don't want to speculate about things that I am not knowledgeable enough on to have a considered opinion.

Having said that, let me make a slightly different point that I do think is important. Whether or not you have testing in high schools, that testing is likely to be, if it occurs, for individuals involved in athletics. If the numbers are as Mr. Burgess suggested and as the newspaper article and the CDC report suggested and that use transcends athletics by large numbers, then I am not sure what the effectiveness of the testing program, if you had one limited to athletics, would be. And in the end, this comes down to persuasion. People have to be persuaded not to do it. And that is tough for teenagers.

Mr. SELIG. The only thing I would say to you is, through the Hooton Foundation and the Partnership For a Drug-Free America and other things that we are doing, we are trying, through the educational process, to explain to kids and help them understand what they are doing. We are going to do a lot more of that. And I think, in the end, the people, whether they are from New York or Missouri or anywhere else, will have to make their own judgment. And I think they will know all the facts better than we do. But as our programs work more effectively and we do more grassroots educational programs, I think that will be where we make our greatest contribution.

Mr. GOODELL. Congressman, let me respond a couple ways. First, I think the NFL and other Major League sports have already helped to some extent because I think they have proven that random unannounced testing is effective and a deterrent to using steroids. Second of all, we have all engaged in our own efforts to make sure that young children and kids growing up playing sports understand that this is not part of professional sports and that we don't encourage it. We discourage you from doing that. We spent

\$10 million alone, the National Football League, on our testing program. So we are spending a significant amount of resources. So I understand the challenges that States are going to have in putting together their own testing programs. It would be a significant burden to put that on top of professional sports in addition to that.

Mr. FOSSELLA. Well, while I have you, Mr. Goodell, I don't want the moment to pass. You have deep, and I know proud, roots in New York. A lot of happy Giants fans. Still some unhappy Jets fans. I don't want to put you on the spot. Is there anything you want to share—between you and me—regarding any efforts—still a lot of unhappy Jets fans in New York. Anything happening on that front with respect to the videotape of Coach Belichick of the Patriots? This is just between you and—

Mr. GOODELL. Just between—

Mr. RUSH. Let me remind the gentleman before you ask that question, that is really beyond the scope of this hearing. I don't want—

Mr. FOSSELLA. I think it is my time, Mr. Chairman. I have 11 seconds left, Mr. Chairman.

Mr. RUSH. All right. If the gentleman really wants to persist with that question, you have 3 seconds to answer it.

Mr. FOSSELLA. Would you like to answer that, Mr. Goodell?

Mr. GOODELL. I would be happy to. I will be very brief. We have dealt with this very effectively in the sense that we—as soon as we got information, we addressed this issue with the team. We had a full admission from the team. We disciplined them in an unprecedented fashion. We disclosed it to everyone publicly. And I think the discipline that was taken will send a very clear and loud message that you are not to break the rules in the NFL.

Mr. FOSSELLA. Thank you for your honesty. Thank you.

Mr. RUSH. Let me remind the gentleman, we all have our problems. I wanted to ask Mr. Selig about, when are the Cubs going to win the World Series? But we all have our issues. Okay. I really want to thank the—

Mr. BURGESS. I just want to—while we have the panel here, the issue came up about testing for human growth hormone. Did I hear someone mention that there is a commercial test available for human growth hormone? And it is a peptide hormone. It almost is going to be broken down by the body. So the products of it are going to be amino acids, which are almost impossible to detect for other amino acids that appear there normally; is that correct?

Mr. FEHR. I can't comment on the science with that degree of precision. I am certainly not competent to do that. But I think we have all indicated, and Mr. Goodell did in his opening statement with some specificity, that a commercially available test is not out there for us to use. Having said that, I don't know if you were here when I made this comment before, but I will take the opportunity to suggest it again: If the Congress could consider requiring some sort of a chemical marker in prescription HGH that would be detectable in urine tests, that would go a long way towards solving a whole lot of the problems in this area.

Mr. BURGESS. Some sort of isotopic labelling on the molecular structure—

Mr. FEHR. I will leave it to you to put the scientific wording on it. That is the best I can do.

Mr. RUSH. The Chair has been very liberal with the gentleman—
Mr. BURGESS. The Chair is very liberal. I will agree with that.

Mr. RUSH—in allowing him to question beyond the time. I want to just thank the panel. You have indeed performed quite a service for this subcommittee. And I would just like to say in the area of—with respect to the World Wrestling Entertainment, you know, it seems to me that the cream has really risen to the top, and the other stuff has stayed down at the bottom. And I really want to thank you and commend you for taking the time out to be a part of this hearing. And as we proceed further, we want to get your full input. And there are some issues right now that remain about whether or not legislation is needed. You know, we will keep those questions open. But, again, I really want to commend you for taking the time out. Thank you so very, very much for your participation.

Mr. SELIG. Thank you.

Mr. RUSH. There is a vote that occurs on the floor—three votes that occur on the floor. We are going to recess the hearing for 30 to—we will reconvene at 1:00 for the second panel. So we will reconvene at 1:00 here in the committee room for the testimony from the second panel.

[Recess from 12:23 p.m. To 1:12 p.m.]

Mr. RUSH. We want to welcome you and thank you for taking the time out from your very busy schedules to come to appear before this subcommittee. And we had pretty invigorating discussion with the earlier committee, and we look forward to even more of an invigorating discussion with the panel from the second committee.

Mr. RUSH. Let me introduce the panel.

From my left, Mr. Jim Scherr is the chief executive officer of the United States Olympic Committee. Mr. Travis T. Tygart is the chief executive officer of the United States Anti-Doping Agency. Mr. Myles Brand is the President of the National Collegiate Athletic Association. Mr. Robert Kanaby is the executive director of the National Federation of State High School Associations. And Mr. Alexander M. Waldrop is the CEO of the National Thoroughbred Racing Association.

We want to extend to the witnesses 5 minutes of opening testimony. If you have opening testimony, would you please take 5 minutes, no more than 5 minutes in order to exchange, and to deliver your opening testimony.

We will begin with you, Mr. Scherr. Welcome. And we look forward to your testimony.

**STATEMENT OF JIM SCHERR, CHIEF EXECUTIVE OFFICER,
U.S. OLYMPIC COMMITTEE, COLORADO SPRINGS, COLORADO**

Mr. SCHERR. Thank you, Mr. Chairman and members of the subcommittee. My name is Jim Scherr. I am the chief executive officer of the United States Olympic Committee. And my experience goes beyond the management of this organization, which oversees all Olympic activity in the United States. I am also a former NCA championship wrestler. I was an Olympic competitor in 1988, and

I have experienced the pressures and challenges that confront athletes on all levels, which is at the heart of our discussion today.

I am pleased to have been invited here to appear before you, because this subject, the use of certain dangerous and prohibited chemical substances to improve athletic performance, is one about which we have considerable concern on many levels. But it is also an area, thanks in large part to USADA and Mr. Tygart on my left, that the USOC has made significant strides through development of an anti-doping program that has become a model for the world.

Let me begin briefly by explaining who and what the USOC is. We are chartered by Congress through the Ted Stevens Olympic and Amateur Sports Act, and we have numerous responsibilities that impact the national interest, among the most obvious being the fielding of teams that compete for the United States in the Olympics, Paralympic and Pan American Games. And as we seek to fulfill that congressionally mandated role, we are guided by a provision of the USOC's mission statement that proclaims we are committed to preserving the Olympic ideal. The heart of the Olympic ideal is to participate with fair play and respect for fundamental ethical principles universally understood by the world. The use by any athlete in the Olympic movement of any banned drug to improve his or her athletic performance is a gross betrayal of the Olympic ideals and those principles on which the ideals are founded.

In discussing what has contributed to our progress and success, I should note that the USOC operates in a unique environment. Participation in the international events we oversee is governed by rules and protocols that are put in place at the international level, which impact the dynamics between us and the athletes we oversee. We do, however, have congressionally granted control over who is named to the U.S. Olympic team. In order to be eligible for membership on an Olympic team, we require that every athlete comply totally with the USOC's anti-doping policies and programs which include unlimited and unannounced out-of-competition tests.

I won't go into the details of the mechanics of those tests and the manner in which the positives are adjudicated because those subjects are better addressed by Travis Tygart, the CEO of USADA, the United States Anti-Doping Agency. However, I believe it is important to highlight for the subcommittee that USADA was created by the USOC and established by the USOC in 2000 to function as an externalized, independent drug testing and adjudication entity. I will further comment about certain of USADA's characteristics, which I am pleased to say are consistent with the generally accepted best practices for anti-doping programs and encompass those recommendations that were contained in the Mitchell Report.

USADA today is jointly funded by the USOC and the Federal Government. It is operationally independent of the USOC and any of our national sports governing bodies whose athletes are subject to the testing. And we are pleased with the progress of USADA to date and the success of our stringent anti-doping program. But we also recognize that more must be done if we are to win the battle against doping in sport.

Two areas which I would like to address briefly for those additional efforts which I believe would be beneficial are research and

education. Research: Effective drug testing is dependent not only upon the willingness of the individual to submit to those examinations but also to the efficacy of a test to determine whether the individual's body is carrying one or more prohibited substances. Athletes who cheat are increasingly sophisticated in identifying methods of beating anti-doping programs. Better, more reliable tests are needed, and those will require considerable research. However, the resources that to date have been devoted to research are limited, and many organizations are pursuing this independently in an uncoordinated fragmented fashion. It was because of this that we proposed the Partnership For Clean Competition that was addressed earlier. And we thank those organizations that have joined us in that effort—National Football League, Major League Baseball—as founding partners and others on the panel that were participating partners. This new collaborative area that we are launching will invest more funds targeted more directly towards research. But what is accomplished will still be limited, and we would like to expand the resources of that partnership. In light of this, perhaps there is an opportunity for the Federal Government to consider support of these efforts through Federal grants and other contributions. Additionally, we would welcome an exploration by the government of whether there may be government health-related organizations that may be able to help with this effort.

The last area I would like to address briefly is education. People, and particularly young people in this country, are educated by observing what happens more so than even what is presented in the classroom. And certain athletes as role models using banned substances impact their education and send a terrible message on many levels. And implicitly it condones cheating, which above all is against the Olympic principles. The use of banned or illegal substances to improve that athlete's performance simply is cheating in any terms. And there is no room for it in athletics in our country, the world or the Olympic movement or professional sports. And secondly, there is the perception that, aside from ethical concerns, the negative health consequences of using these substances are often overlooked by young people, if they see celebrities and athletes and others utilizing these substances. We would like to join with the leagues, with the professional sport entities, government agencies, such as the Office of National Drug Control Policy, and other private coalitions to launch more thorough campaigns to educate young people against the dangers and ethical contradictions of using banned substances to improve athletic performance. These efforts have been effective in the past, but there are still gaps. And society does not seem to be getting the message through in large measure. And with proper support, I see an opportunity for us to join these others.

Let me close with this thought: We offer no opinion on the professional leagues and what they might do in their own testing programs. We believe the recommendations in the Mitchell Report are sound. We would consider their adoption. They have been sound for us. And we believe they would work across other sports as well. Thank you for the opportunity to present.

[The prepared statement of Mr. Scherr follows:]

STATEMENT OF JIM SCHERR

Good morning Mr. Chairman and Members of the Subcommittee. My name is Jim Scherr and I am the Chief Executive Officer of the United States Olympic Committee. My experience goes beyond the management of an organization overseeing all Olympic activity in the United States. I am a former NCAA championship wrestler and an Olympic athlete, and have experienced the pressures and challenges that confront athletes on all levels, and which is at the heart of the discussion today. I am pleased to have been invited to appear before this subcommittee because the subject, the use of certain dangerous and prohibited chemical substances to improve athletic performance, is one about which the USOC has considerable concern on many levels. But it is also an area where the USOC has made significant strides through the development of an anti-doping program that has become a model for the world.

Let me begin by briefly explaining who and what the USOC is. Chartered by Congress through the Ted Stevens Olympic and Amateur Sports Act, we have numerous responsibilities that impact the national interest, among the most obvious being the fielding of athletes to compete for the United States in the Olympic, Paralympic, and Pan American Games. In reach and scope we are a large organization, overseeing the governance of forty-five national sports governing bodies and have in our membership numerous educational, community, military, and disability groups whose activities collectively involve and impact millions of Americans of all ages and all levels of athletic competency.

In addition, we are guided by a provision of the USOC's mission statement that proclaims that we are committed to "preserving the Olympic ideal." The Olympic ideal, as enumerated in the Olympic Charter to which all participating Olympic nations must subscribe, stresses the attributes of fair play, and the respect for fundamental ethical principles. The use by any athlete in the Olympic Movement of any banned drug to improve his or her athletic performance is a gross betrayal of those principles.

In discussing what has contributed to our progress and success in the fight against doping in sport, I should note that the USOC operates in a unique environment. Participation in the international events we oversee is governed by rules and protocols that are put in place at the International level which impact the dynamics between us and the athletes we oversee. We do, however, have congressionally-granted control over who is named to the U.S. Olympic Team. In order to be eligible for membership on a U.S. Olympic Team, we require that an athlete comply totally with the USOC's anti-doping policies and programs, which include unlimited and unannounced out-of-competition examinations.

I won't go into the details of the mechanics of these tests and the manner in which positives are adjudicated because those are subjects that are better addressed by Travis Tygart, the CEO of the United States Anti-Doping Agency, otherwise known by its acronym, "USADA." However, I believe it is important to highlight for the Subcommittee that USADA was created by the USOC and established by the USOC in 2000 to function as an independent drug testing and adjudication entity. Further, I will comment about certain of USADA's characteristics which, I am pleased to say, are consistent with the generally accepted best practices for anti-doping programs. Although USADA today is jointly funded by the USOC and the federal government, it is operationally independent of the USOC and any of the sports governing bodies whose athletes are subject to the anti-doping programs USADA conducts and the USOC requires. Dedicated to the fulfillment of a mission that concentrates on testing, adjudication, education, and research, USADA conducts its business in a highly transparent manner that virtually eliminates any question of conflict of interest.

The USOC is pleased with the progress made by USADA and the success of the USOC's stringent anti-doping program, but recognizes that more must be done if we are to win the battle against doping in sport.

Two areas which I would like to address where additional efforts and improvements should be made are in the areas of research and education.

First of all is the matter of research. Effective drug testing is dependent upon not only the willingness of an individual to submit to an examination, but also to the efficacy of a test to determine whether that individual's body is carrying one or more prohibited substances. Athletes who choose to cheat, are increasingly sophisticated in identifying methods to beat anti-doping programs.

Substances such as human growth hormone as well as other "designer" drugs being developed and refined on an ongoing basis by those who would seek to cheat are complicated and difficult to detect through current testing protocols. Better, more reliable tests are needed and those will require considerable research. How-

ever, the resources that have been devoted to research are limited, and while other organizations may be independently pursuing work in this area, the efforts tend to be uncoordinated and fragmented. It was because of this that the USOC proposed a collaborative effort in the area of research, the "Partnership for Clean Competition". I am pleased to recognize those organizations who have initially joined in this effort and thank them for their leadership and commitment.

The new Partnership for Clean Competition that we are launching will invest more funds, targeted more directly and, presumably, more effectively, toward research that may result in more reliable, non-invasive, and cost-effective tests that will easily reveal the presence of a variety of substances in an individual. But what is accomplished will still be limited and we need to expand the resources of our partnership. In light of this, perhaps there is an opportunity for the federal government to consider support of these efforts through federal grants or other contributions. Additionally, we would welcome an exploration by the government of whether there may be government health-related organizations that can also help with this effort.

The second area I would like to briefly address is education. People, particularly young people, are educated as much by observing what happens in their world as what is presented in the classroom. And when it is disclosed that certain athlete role models have used banned substances to improve their performance, it sends a terrible message on many levels.

First of all it implicitly condones cheating. The use of banned or illegal substances to improve athletic performance is nothing more than cheating. Secondly, there is the perception that aside from the ethical concerns, there are few, if any, deleterious health consequences of using these substances. Both children and adults are exposed to a constant barrage of advertising, news stories regarding how celebrities have used certain drugs to retain or renew their youth, and suggestions that certain exotic "natural substances," readily available in health food stores, offer a panacea for health, fitness and well-being. Such information often masks reports of the tragic consequences that can lead to depression, suicides, and the development of other fatal conditions, all of which appear to have resulted from the use of certain of these substances.

On the education front the leagues, certain government agencies such as the Office of National Drug Control Policy, private coalitions, and others have launched campaigns to educate society against both the dangers and the ethical contradictions of using chemical substances to improve athletic performance. These have all been quite effective but there are still gaps and the message still seems not to be getting through at least to some segments of society. With proper support, I see an opportunity for the USOC to join with others in the area of education. In this way we might fill a gap in communicating an effective message that is otherwise eluding some young people.

Some observers have questioned the legitimacy and advisability of the federal government involving itself in matters that may be better addressed by and are the province of the private sector. We offer no opinion regarding what is best for the professional leagues but would note for the Subcommittee that we believe that the USOC's and the Olympic Movement's stringent system far surpasses any program that could readily be required by the federal government. If the USOC has the ability to address these issues without government oversight, we fully believe that the professional leagues have the ability as well. It is only a question of when and how. But we nevertheless recognize that there are areas such as research and education where we need to work together as a team. That, I am convinced, is the appropriate role for the government to play in this important challenge and ask my colleagues in the professional leagues to join the United States Olympic Committee in extending this invitation to the federal government to partner with us in this area.

Thank you for your consideration of these thoughts but more importantly, thank you for your attention to this issue which poses a considerable threat to American society if left unchecked.

Mr. RUSH. Thank you. Mr. Tygart.

STATEMENT OF TRAVIS T. TYGART, CHIEF EXECUTIVE OFFICER, U.S. ANTI-DOPING AGENCY, COLORADO SPRINGS, COLORADO

Mr. TYGART. Mr. Chairman, members of the subcommittee, good afternoon. My name is Travis Tygart. I am the chief executive offi-

cer of the United States Anti-Doping Agency. USADA appreciates the opportunity to appear before you today in your long-standing interests and the rights of clean athletes and the integrity of competition.

I speak with you today not only as the head of USADA but also as the father of three young children, all ages 6 years and under. And I hope, probably like many of you with your children and your grandchildren, that one day they can obtain the lessons of life only obtained through competition played with honor and with integrity and without the use of performance-enhancing drugs.

USADA's sole mission is to protect and preserve the rights of clean athletes and the integrity of competition and the well-being of sport through the elimination of doping. Congress has officially recognized USADA as the independent Anti-Doping Agency in the United States for Olympic and Paralympic sport. Why does USADA care so much about the professional anti-doping policies?

First of all, whether fair or not, the world draws little distinction between professional and Olympic athletes. Our clean Olympic athletes want to distinguish themselves from dirty athletes. And our Olympic athletes frequently want to distinguish themselves from the professional athletes because they are too frequently viewed through the lens of the professional sports leagues in this country.

Second, we test many of these professional athletes when they decide to compete in the Olympic games. 12 months prior to such Olympic games, these athletes do fall under our jurisdiction and our testing programs. It is important for this committee to understand professional basketball players, tennis players, hockey players willingly subject themselves to the highest standards that we have in the Olympic movement, including no-advance-notice out-of-competition year-round testing, including 2-year suspensions.

Thirdly and possibly most importantly, our kids and the next generation of Olympic athletes are watching. The doping crisis is not just a public image problem for a group of owners or certain professional athletes. It is a health and an ethical problem that reaches right to the heart of our grade schools and our high schools.

Finally, USADA's perspective on the current anti-doping climate comes from living the history of the fight against doping that has occurred within the international Olympic movement over the past 10 years. The Mitchell Report echoes a similar process undertaken by the International Olympic Committee and the United States Olympic Committee in the late 1990s in this country. In the 1990s, the system of regulation by the various sports led to perceptions of conflict and allegations of attempts to cover up doping behavior among U.S. athletes. The USOC formed a task force to investigate and consider the best approach to fighting doping in the Olympic movement. The key finding of that USOC task force was that the fight against doping in sport needed to be led by an independent and transparent entity. Accordingly, USADA was formed in 2000. The creation of USADA triggered a radical transformation in the world's perception of the anti-doping efforts by the United States Olympic Committee.

The USOC and the 45 national governing bodies took this courageous step because it was clear that the sports cannot both promote

and police themselves. In addition to independence and transparency, the matrix of effectiveness agreed to by all the experts, including Senator Mitchell after his review, that anti-doping policies must be evaluated includes: out-of-season and out-of-competition no-advance-notice testing; an exhaustive and evolving list of prohibited substances and methods; implementation of best legal and scientific practices; significant investments into education to truly change the hearts and minds of would-be cheaters; significant investments into research for the detection of new doping substances and techniques; partnerships with government, particularly law enforcement, to ensure that, in addition to holding athletes accountable, those who illegally manufacture, traffic, distribute, and otherwise sell these dangerous drugs are also held accountable for their illegal behavior. We saw powerful examples of this cooperation in the BALCO investigation and others like it, such as Operation Raw Deal.

The U.S. Olympic movement is fortunate to have a strong group of athletes who recognize the importance of clean sport and are looking for ways to become even more involved. Our Olympic athletes support USADA's efforts because they trust us as an independent group to independently and evenly apply the rules to all athletes. We support congressional efforts to encourage effective anti-doping programs at the elite level of sport. There are other important steps that I have outlined in my submitted testimony that I would like to you see. I am more than happy and would request the opportunity during the question and answer to clarify some of the misinformation that I think was presented to you previously, specifically concerning the human growth hormone test and the scientific validity of saving samples for retesting at a later date. Thank you for your interest.

[The prepared statement of Mr. Tygart follows:]

STATEMENT OF TRAVIS T. TYGART

Mr. Chairman, members of the committee, good morning. My name is Travis Tygart and I am the CEO of the United States Anti-Doping Agency (USADA). I want to thank this committee for its long-standing interest in clean sport and for the opportunity to appear before you today to discuss this important ethical and health issue.

As a father of 3 young children all ages 6 years and under, I hope that one day they will all learn the valuable lessons of life only obtained by participating in sports played with integrity, honor and without prohibited drugs. In its purest form sport builds character and promotes the virtues of selfless teamwork, dedication and commitment to a greater cause. True sport is built on the idea of honesty and respect.

It is these core principles of sport that bring our communities together to cheer athletes and empower athletes to pursue their dreams and to inspire others through the accomplishment of those dreams. Doping eats away at these important attributes and compromises everything valuable about sport.

Accordingly, we welcome and appreciate this Committee's focus on the harms that are caused by performance enhancing drugs in sport. USADA has been recognized by Congress as the independent, national anti-doping agency for Olympic and Paralympic sport in the United States. Our sole mission is to protect and preserve the health of athletes, the integrity of competition, and the well-being of sport through the elimination of doping. Stated another way, every day that the independent USADA Board of Directors and employees of USADA go to work we are focused only on the very issue that we are all here to discuss.

We are all gathered here today, in part, because the recently released Mitchell Report confirmed what has been suspected for many years - that some in Major League Baseball have succumbed to doping. Specifically, Senator Mitchell found

that “[f]or more than a decade there has been widespread illegal use of anabolic steroids and other performance enhancing substances by players in Major League Baseball, in violation of federal law and baseball policy.”

While the recent struggles of professional baseball may be the current impetus behind this hearing, the issues involved extend well beyond any one professional sport. The issue of drugs in sport strikes at the very heart of the question of what role sport will play in America’s future. USADA’s interest in this discussion is driven by a motive to not only protect the rights of today’s Olympic athletes to play drug free but just as important to protect America’s next generation of athletes. The doping crisis described in the report by Senator Mitchell is not just a public image problem for a group of owners or certain professional athletes. Illicit steroid use is illegal and an ethical and public health problem that reaches right to the core of our collective values and our future, because it adversely affects today’s high school, junior high school and even grade school athletes.

America’s future Olympic Gold Medalists in Track and Field, Swimming, Bobsled-ding, Basketball and every other Olympic sport, are out there right now learning from the example set by today’s Olympic athletes and professional athletes. The question is, what lessons are they learning? Are they learning that athletic success justifies whatever means are required to achieve it? Is the lesson that cheating to win is okay as long as it sells tickets and raises profits?

USADA’s mission is to make sure that in the context of Olympic sport, today’s Olympians are allowed to compete clean and those who decide to cheat are caught and punished. In that way, tomorrow’s Olympians will know that there are no shortcuts to true achievement on the playing field.

USADA’s perspective on the current anti-doping climate comes from living the history of the fight against doping that has occurred within the international Olympic movement over the past ten years. That history is important because the questions faced and the answers offered by the Mitchell Report echo a similar process undertaken by the International Olympic Committee and the United States Olympic Committee (USOC) in the late 1990’s.

In the 1990’s, the world did not view the United States as being committed to preventing doping among its Olympic athletes. The system of self-regulation by the various sports led to perceptions of conflict of interest and allegations of attempts to cover up doping behavior among United States’ athletes. The USOC formed a task force to investigate and consider the best approach to fighting doping in the Olympic movement. That task force faced many of the same questions confronted by Senator Mitchell in his analysis and, not surprisingly, the recommendations of Senator Mitchell are very similar to the recommendations of the USOC task force.

The key finding of the USOC’s task force was that fight against doping in Olympic sport needed to be led by a truly independent and transparent entity. Accordingly, USADA was formed in 2000. The creation of USADA triggered a radical transformation in the world’s perception of anti-doping efforts in the United States Olympic Movement. We are now viewed as a world leader in Olympic anti-doping and it is universally acknowledged that our athletes are subject to one of the world’s most rigorous anti-doping programs in the world. Moreover, USADA’s willingness to pursue investigations of athletes and coaches and hold them accountable for cheating based on evidence other than a positive test has reinforced the world’s view of our commitment to clean sport. For these reasons, other national anti-doping agencies, such as the Russian agency, travel to the United States to meet with USADA and learn from our practices and programs. Significantly, this dramatic shift to independent administration of anti-doping efforts was also accomplished on a world level when the International Olympic Committee after reviewing the issues also externalized its anti-doping efforts to the independent entity, the World Anti-Doping Agency. Other nations have followed the paradigm shift and it is now universally accepted that true independence is the hallmark of an effective anti-doping program.

It was an extremely courageous decision for the USOC and the 45 or so national governing bodies to fully externalize their efforts to USADA, but they took the stand because it was clear that the sports themselves could not simultaneously promote and police their sports. And, since they all desired an effective program, there were no reasons not to externalize their anti-doping efforts. Similarly, in recommending a path forward for Major League Baseball, Senator Mitchell concluded that independence was a threshold component of a state-of-the-art anti-doping program that “should be administered by a truly independent authority that holds exclusive authority over its structure and administration.”

It is important that “independence” not be dismissed as simply window dressing designed to remove perceived conflicts. Instead, USADA’s experience has established that true independence is a functional and fundamental requirement of an effective anti-doping program. In fact, true independence is the single most important ele-

ment of the USADA model because it provides us with complete authority over all areas of the entire anti-doping program. Simply put, USADA's mission is to protect clean sport and preserve the rights of athletes to compete clean. In accomplishing that mission, USADA does not have a conflicting duty to also protect the image of the sport it serves or of commercial factors such as obligations to sponsors, owners or other investors. This true independence frees USADA to take the steps necessary to accomplish its mission without worrying about the possible negative impact on the financial interests or the image of the sport.

Ultimately, by keeping a steadfast focus on the sole goal of clean sport, USADA has improved the image of Olympic sport, but that victory has necessarily come at the price of exposing the dark side of sport along the way. When the path to redemption requires that individuals once thought to be heroes must be exposed as frauds, it takes a strong resolve to walk that path. Unfortunately, experience establishes that where that resolve may be impacted by a duty to protect the image of the sport or its profits then the mission will be easily compromised. This point is made resoundingly clear in the Mitchell Report.

The history of anti-doping efforts in the Olympic movement and the experience of other sports, establish that partial independence is not an effective model for fighting doping in sport. The fight against doping in sport cannot be a part-time job and true progress will not be achieved through anything less than the full commitment and dedication of a team of experts.

In addition to true independence and transparency, the matrix of effectiveness agreed to by the experts and also detailed in the Mitchell Report by which all anti-doping policies can be evaluated must include:

Effective out of season and out of competition, no advanced notice testing;

A full list of prohibited substances and methods that would capture new, designer drugs as they are developed;

Implementation of best legal and scientific policies and practices as they evolve which must include adequate sanctions and due process protections for those accused of doping violations;

Significant investments into education to truly change the hearts and minds of would be cheaters and to teach the lessons of life that can be learned only from ethical competition;

Significant investments into scientific research for the detection of new doping substances and techniques and for the pursuit of scientific excellence into anti-doping;

Partnerships with government particularly law enforcement to ensure that in addition to holding athletes accountable, those who illegally manufacture, traffic and distribute these dangerous drugs and who are typically outside of sports jurisdiction are also held accountable for their illegal behavior. It is the success of this very cooperation seen through the BALCO investigation and others like it such as, Operation Raw Deal, which has directly led us all here today.

Ultimately, this fight for the soul of sport, most directly impacts the clean athletes. The U.S. Olympic movement is fortunate to have a strong group of athletes who recognize the importance of this issue and are looking for ways to become even more involved. Our Olympic athletes support USADA's efforts because they trust us to evenly apply the rules to all athletes including high profile, high dollar superstars; they want us to protect their right to compete clean and they want American sports fans to be able to once again believe in their Olympic heroes. Our clean Olympic athletes also are desperate to distinguish themselves from dirty athletes as well as those athletes who play in professional sports because too frequently the international sports world views our Olympic athletes through the lens of the professional leagues and their anti-doping policies.

Our duty to these clean athletes and our mission require us to advocate for the most effective anti-doping policies at all levels of sport even when that means offering candid assessments of the programs of other sports entities. While no anti-doping program is perfect until the matrix of effectiveness discussed above is fully realized by all elite level sports organizations their programs will not be as effective as they should be. In the Olympic movement, we did this on our own and without federal government scrutiny or legislation. And, while the professional leagues anti-doping policies have significantly improved over the past several years, they still fail to fully implement all the basic elements of the most effective programs. USADA supports efforts to encourage anti-doping programs implemented at the elite level of all sport.

Additionally, there is more that we strongly believe the federal government can do to assist the goal of protecting athletes and the integrity of sport at all levels. First, in 2004 Congress passed the Anabolic Steroid Control Act that in addition to scheduling many of the steroid precursors and designer steroids on the Controlled

Substances Act at Section 4 also authorized \$15 million annually for school based education efforts. Regrettably, this program has never been funded. Appropriating funds for an in-school program would provide a broad based educational foundation to our children of the importance of healthy living, ethical decision making and the dangers of using dangerous performance enhancing drugs.

Second, there is currently legislation before the House and Senate, HR 4911 and S. 877, that would add Human Growth Hormone (HGH) to the Controlled Substance Act. Passage of this bill would quickly strengthen the law enforcement efforts to enforce the illegal distribution and use of HGH. Third, there is additional legislation, S. 980, the Online Pharmacy Consumer Protection Act, that would prohibit an on-line pharmacy from selling a controlled substance over the Internet without a valid prescription. Passage of this bill would further enhance the control of these dangerous drugs and make it more difficult for these drugs to end up in the hands of our children via the internet. Fourth, while scientific research efforts must be fully supported by sport and we are pleased that Major League Baseball and the National Football League have agreed to partner with the USOC and USADA to fund research into this area through the Partnership for Clean Competition, the federal government can assist this effort by appropriating additional funding to further this anti-doping research.

I would like to thank this Committee for its time and its interest in this important ethical and public health issue and for inviting me to share USADA's experience and perspectives. We look forward in assisting you as needed as you move forward.

Mr. RUSH. Thank you so very much.

Dr. Brand, welcome again. And you have got 5 minutes please. Thank you.

STATEMENT OF MYLES BRAND, PRESIDENT, NATIONAL COLLEGIATE ATHLETICS ASSOCIATION, INDIANAPOLIS, INDIANA

Mr. BRAND. I want to thank you for holding this hearing and for the opportunity to appear before you. The issue of performance-enhancing drugs in sports is a serious and pernicious threat to the health of those who participate and to the integrity of intercollegiate athletics. It is one that NCAA and higher education takes seriously and has addressed earnestly for more than three decades.

There is ample evidence that the use of the more potent performance aids presents a significant health risk for athletes. In the case of other aids, such as supplements, not enough evidence is available to determine the long-range effects. But in all cases, the sustained and habitual use of performance enhancers presents an abuse of healthy best practices. Furthermore, from the viewpoint of governing bodies charged with the responsibility to ensure fair play and the ethical conduct of athletics competition, the use of performance-enhancing drugs is cheating, pure and simple. It is an attempt to create an artificial advantage that the abuser hopes is not available to or will not be used by opponents. The prohibition of such use, therefore, is necessary both for the protection of sports and especially the good health of athletes.

Over the past 20 years, the NCAA has aggressively addressed what it saw as an emerging problem and the willingness of some student athletes and trainers and coaches to put their health and the integrity of the sport at risk. The association's approach has been three pronged: education, testing and sanctioning. Since the 1970s, the NCAA has developed and mandated education for student athletes on the risks of performance-enhancing drugs. This emphasis on education is part of the unique relationship between the NCAA and the student athletes.

Each fall, almost 400,000 student athletes—not the 450, for example, compared to the NBA—400,000 athletes who compete in intercollegiate athletics must document that they have been so informed and attest that they will not use such drugs. The NCAA began its first drug testing program in 1986 and today conducts such testing at all its 89 championships in every sport at every level. In addition, the association conducts random out-of-season testings in Divisions I and II. In fact, 80 percent of the NCAA drug tests are outside the association's championship testing. Division III is also engaged in a major pilot for drug testing out of season.

In the same way as USOC operates, our efforts are carried out under the strictest protocols using independent laboratories and under the guidelines of WADA, the World Anti-Doping Agency. Over the past two decades, hundreds of thousands of student athletes have been tested. The NCAA drug testing program is supplemented by member colleges and universities in Divisions I and II. Approximately 78,000 student athletes are tested annually through these efforts.

When a student athlete tests positive through an NCAA drug testing effort for the use of performance enhancers, the consequences are swift and harsh. The first offense results in a loss of eligibility of 1 year, which is 25 percent of the total student athlete's eligibility. The second offense results in permanent loss of eligibility. The offenders are out of college sports entirely. One strike and you are out. These are penalties that leave no question about the seriousness of intercollegiate athletics' expectations for drug-free competition or the intent of higher education to influence the behavior of those inclined to cheat.

Although it is impossible to totally eradicate the use of performance-enhancing drugs, I am confident, based upon over two decades of data, that the association's practices of drug education, testing and penalty have resulted in a very serious decline. In 1990, when the NCAA began testing for anabolic steroids, approximately 10 percent of football players, Divisions I and II, reported use of such enhancers. By 1993, that number had been cut in half. Today, the number of student athletes who test positive to all banned substances in all sports is less than 1 percent. There is no question the NCAA's drug testing efforts have been both punitive and a deterrent.

Now, America loves sports and makes heroes of those who compete with skill and precision. In higher education, we firmly believe there is educational value in athletic participation. But it can all be undone in a heartbeat if those of us charged with the governance of intercollegiate athletics neglect our responsibility to protect the health of student athletes and the integrity of college sports. I can assure this committee that the NCAA and all higher education are committed to an aggressive prohibition of performance-enhancing drugs and meaningful consistently enforced and applied sanctions.

The NCAA and its member colleges and universities spend nearly \$10 million annually on drug testing and considerably more on drug education. We take this issue very seriously, have a track record of aggressive efforts to eliminate such use and are resolute

in our intent to protect both student athletes and college sports. And again, I thank you for the opportunity.

[The prepared statement of Mr. Brand follows:]

STATEMENT OF MYLES BRAND

Chairman Rush, Ranking Member Whitfield, and other distinguished Members of the Subcommittee, on behalf of the National Collegiate Athletic Association, as president of the NCAA, I appreciate the opportunity to appear today and inform you of the Association's drug education and drug-testing programs.

The NCAA has worked diligently for more than 35 years to provide leadership and resources to its member schools in partnership for effective drug abuse deterrence. The NCAA is a private association of approximately 1,200 four-year institutions of higher education and athletics conferences. There are more than 380,000 student-athletes competing at these NCAA member schools. According to the NCAA Constitution, under the Principle of Student-Athlete Welfare, intercollegiate athletics programs "shall be conducted in a manner designed to protect and enhance the physical and educational welfare of student-athletes." The NCAA manual makes clear that it is the responsibility of each member institution to protect the health and safety of and provide a safe environment for each of its participating student-athletes.

The NCAA Drug-Testing Program is an aggressive initiative now in its third decade working to ensure that intercollegiate athletics is as free of performance-enhancing drugs as possible. The NCAA and its member institutions have taken a strong stand to deter doping in sports and have long established serious penalties for those who violate these policies. Under the NCAA testing program, athletes who test positive are withheld from competition in all sports for at least one year, and lose one of their four years of collegiate eligibility. Athletes who test positive a second time for steroids and other performance-enhancing drugs lose all remaining eligibility and are permanently banned from intercollegiate athletics competition.

The NCAA testing program has proven to be effective in dramatically reducing the use of such drugs by collegiate athletes. And the proof is verified by the longitudinal study of NCAA athlete drug use, administered every four years since 1985. In the 1989 Study of the Substance Use Habits of College Student Athletes, 9.7% of NCAA Division I football student-athletes reported using anabolic steroids. In 1990, the NCAA began testing for anabolic steroids during the academic year in all Division I football programs. In the 1993 study, 5.0% of Division I football student-athletes reported using anabolic steroids, and subsequently, 2.2% reported steroid use in the 1997 study. In the most recent study (2005), 2.3 % of football student-athletes reported steroid use.

This impact is the result of a comprehensive approach and a number of key factors in our drug-education and testing programs:

- A strict drug-testing protocol, reviewed and published annually;
- A national drug-testing program where student-athletes are subject to testing at any time through a random and short notice selection process;
- The use of an outside independent third-party drug-testing administrator;
- Standardized serious penalties for violations: a first positive drug test results in the loss of one of the four years of eligibility and withholding from all sports; a second positive for a performance-enhancing drug permanently removes the athlete from intercollegiate sports;
- Transparency in publishing aggregate drug-testing results and the report of survey data on drug use;
- And a broad-based educational effort combining the expertise, resources and programs of the NCAA national office, the athletic conference offices and the individual schools.

In order to promote student-athlete well-being and create an environment that does not permit drug use, the NCAA has developed a collaborative and comprehensive approach of strong policy, effective education and detection. This approach is strengthened by the effort and support of member schools. Critical to success is the philosophy embedded in the NCAA Constitution whereby member institutions adopt common values and commit to the principals that assure student-athlete health and safety and protect the integrity of collegiate athletics. Member schools are required to conduct annual compliance meetings where every student-athlete signs a drug-testing consent form and is educated about banned drugs and products that may contain them. NCAA regulations require that member schools respond to any knowledge of banned drug use, and the ethical code of conduct prohibits athletics staff

from providing banned drugs to any student-athlete, or providing prescription medication outside of medical standards of practice.

The NCAA formalized its national drug-education program in the 1970's, and started its drug-testing programs in 1986. The NCAA drug-testing program has earned a reputation as a model of quality and professionalism. The NCAA spends more than \$4 million annually for the national drug-testing programs, and this effort is supported by another \$4.8 million spent by member institutions on campus-administered drug testing. Overall, the NCAA has spent over \$50 million dollars in testing and countless millions in additional resources in educating collegiate athletes to avoid drug use. The majority of member schools have developed institutional policies to conduct drug-education and drug testing programs for their athletes, as measured through the biennial Drug-Education and Testing survey of the membership. This partnership - national office and Association member -- provides a strong anti-doping message throughout intercollegiate athletics programs.

DRUG TESTING

The NCAA sponsors two national drug-testing programs for college athletes - during NCAA championships and randomly throughout the year. The NCAA believes that drug testing is an integral part of drug-abuse prevention. NCAA drug testing was established to protect student-athlete health and safety and to ensure that athletes are not using performance-enhancing drugs to gain a competitive advantage.

The NCAA first introduced drug testing at its championships and postseason football bowl games in 1986. Since 1986, any NCAA athlete competing in these events is subject to NCAA drug testing, and approximately 2,000 athletes are tested each year through championship drug testing. NCAA testing is conducted by an independent third-party drug-testing administrator. Selections and notification are completed via direct communication with the athletics office of the selected school, with no notification provided to the NCAA. Selections are done through short notice of randomly selected subjects, and functions under a strict, published protocol. The NCAA utilizes only World Anti-Doping Agency (WADA) certified laboratories.

As part of its drug-prevention efforts, the NCAA publishes a list of banned drug classes. This list bans more performance-enhancing drugs than what is banned under federal law, and includes the anabolic steroid precursor DHEA and the stimulant synephrine.

To deter the use of training drugs such as anabolic steroids, the NCAA implemented a second drug-testing program in August 1990. Today as part of this program, approximately 11,000 athletes, including incoming freshman and transfers, are tested by the NCAA all through the year. Athletes in all sports in Division I and II, and all athletes participating in NCAA championships, are subject to NCAA year-round drug testing. Sanctions for positive drug tests are automatic and defined for the student-athlete in the annual signing of the NCAA drug-testing consent form.

COMPETITIVE SAFEGUARDS AND MEDICAL ASPECTS OF SPORTS

The NCAA Association-Wide Committee on Competitive Safeguards and Medical Aspects of Sports, CSMAS, provides expertise and guidance to the NCAA on issues pertaining to student-athlete health and safety. CSMAS is comprised of experts in sports medicine practice and research, sports law, and athletics administration. A member of the National Federation of High School Associations sits on this committee in order to facilitate communications on safety and drug deterrence policies. A current roster of these members is attached to this statement [Attachment 1]. Committee members have been published in their respective fields, and are looked to as important resources for sports science information. These dedicated professionals contribute their time and expertise to assist the NCAA in the development of drug-education and testing policies, and provide medical and policy review and adjudication through a "blind" appeal for any student-athlete who wishes to appeal a positive drug test. In addition, a committee panel of medical experts provides review of medical documentation to determine if an exception will be allowed for the use of any medication that contains a banned substance. NCAA policy requires that a non-banned alternative be used if medically appropriate. Approval to use a prescription medication that contains a banned substance is granted only after documentation of the diagnosis, course of treatment, and current prescription is submitted and deemed medically necessary. This committee annually reviews the NCAA drug-testing program protocol and list of banned drugs, which is published annually to the entire membership.

DRUG RESEARCH

Since 1985, the NCAA has conducted a national study of the drug use habits of college athletes. The NCAA is the only sports governing body that has this longitudinal research to provide data regarding the effectiveness of its drug-deterrence programs. The study is replicated every four years and five replications have been conducted since the original study. The study is designed to obtain data on the substances and use patterns of college athletes through the use of anonymous self-report questionnaires. This data assists us in developing policy and practices to deter drug use by collegiate athletes. More than 20,000 student-athletes completed the survey in the 2005 study. The 2009 study will be administered in the upcoming academic year. Copies of the last two published studies are available at www.ncaa.org/health-safety

NCAA MEMBERSHIP REQUIREMENTS AND SUPPORT OF DRUG DETERRENCE

To support and promote drug education for student-athletes, NCAA bylaw requires that each institution's Director of Athletics or the director's designee educate student-athletes about NCAA banned substances and the products that may contain them. Student-athletes are required to sign a student-athlete statement and a drug-testing consent form that alerts them to the NCAA drug-testing policies and the list of banned substances, and requires their agreement to abide by these regulations and be tested when selected anytime during the year or during any championship play. The NCAA publishes guidelines for institutional drug-education programs, and annually provides more than a million dollars in resources to its member institutions to help them conduct campus drug-education and prevention efforts. Some of the other resources provided to assist our member institutions to enhance student-athlete health and safety and deter drug use are:

- Health and safety specialists. The NCAA national office employs staff members who oversee the NCAA's health and safety initiatives.
- The NCAA Sports Medicine Handbook. A set of sports medicine guidelines compiled by leaders in the field of sports science that includes the NCAA's recommendations on educating athletes about drugs and supplements.
- The NCAA-sponsored APPLE Conferences: promoting substance abuse prevention and student-athlete well-being. These strategic planning workshops train teams of athletics staff and student-athletes to identify needs and enhance drug education on individual campuses.
- Educational information via bookmarks, posters, and Web-based resources.
- Educational conferences for coaches and administrators on deterring supplement use by athletes.
- A national speaker's bureau of experts on drug use in sport.
- The Dietary Supplement Resource Exchange Center (REC). All NCAA athletes and staff may use this service funded by the NCAA and housed at Drug Free Sport, the company that manages the Association's drug-testing efforts. The REC provides a toll-free number and Web site for athletes to get reliable information about NCAA banned substances, medications and supplements. Inquiries are treated in a confidential manner.
- Articles and alerts through its electronic publication, The NCAA News, which has featured a number of articles on drug use in sports.
- A special advisory memorandum sent periodically to the senior athletics administrators at every NCAA institution to alert them to the potential risks of banned drugs in dietary supplements.

PROVEN RESULTS AND CONTINUED GROWTH

The NCAA has been active in the fight to eliminate steroid and other performance enhancing drug use for over 35 years. Through collaborative educational efforts with sports medicine and athletics organizations, the NCAA has been a champion in deterring the use of these substances by young athletes. The establishment of drug testing, NCAA support for drug-testing research, the strengthening of NCAA and campus policies to deter drug use, and the combined educational efforts from the NCAA national office and campus athletics staff have had a positive impact on steroid use.

In the last two years, the NCAA has added testing through the summer months, expanded testing for masking agents, and engaged in a two-year pilot testing program in Division III. In addition NCAA honors USADA/WADA suspensions by withholding athletes from any NCAA competition for the duration of the suspension.

NEXT STEPS

The NCAA was vocal and supportive of legislative efforts to remove steroid precursors from the dietary supplement market through the Anabolic Steroid Control Act of 2004. We support further government efforts to control steroids and human growth hormone, including HR 4911 and SB 877 that identify HGH as a Schedule III Controlled Substance, and SB 2470 that restricts the sale of DHEA, a steroid precursor. The NCAA supports drug-testing research, and annually reviews the literature and data to determine trends and effective strategies to deter use. We support our colleagues in their efforts to address drug use at the high school and professional leagues, and offer our cooperation to those who share in our commitment to ensure safe, drug free sport. As we have for over two decades, we will continue to enlist the expertise of sports scientists to provide us guidance in our drug-testing programs. The important next steps involve expanding resources for research in the areas of more cost effective steroid testing, detecting new performance enhancing substances as they emerge, and identifying and implementing effective prevention strategies. Though we have had success in reducing the use of performance-enhancing drugs, we recognize the continuing challenges posed by emerging drugs. We urge funding support for drug-testing research and implementation of programs that have been able to demonstrate a positive impact on youth decisions to enhance performance through healthy and fair strategies, by hard work, dedication and practicing healthy behaviors.

On behalf of the NCAA, I would like to thank the subcommittee for the opportunity to speak before you today and express the NCAA's willingness to assist in moving forward in this monumental and critical task to eradicate drugs from sports.

NCAA DRUG-EDUCATION AND TESTING - ENSURING THE HEALTH AND SAFETY OF STUDENT ATHLETES

The NCAA has worked diligently for more than 35 years to provide leadership and resources to its member schools in partnership for effective drug abuse deterrence. The NCAA utilizes a comprehensive drug-education and testing program, coupled with serious penalties to deter drug use by student-athletes. Athletes lose one of four years of eligibility for a first positive, and are permanently removed from collegiate sport for a second positive drug test.

Best Practices: Key factors in our drug-education and testing programs:

- A broad-based educational effort combining the expertise, resources and programs of the NCAA national office, the athletic conference offices and the individual schools.
- A strict drug-testing protocol, reviewed and published annually;
- A national drug-testing program where student-athletes are subject to testing at any time through a random and short notice selection process;
- The use of an outside independent third-party drug-testing administrator;
- Standardized serious penalties for violations: a first positive drug test results in the loss of one of the four years of eligibility and withholding from all sports; a second positive for a performance-enhancing drug permanently removes the athlete from intercollegiate sports;
- Transparency in publishing aggregate drug-testing results and the report of survey data on drug use;
- Regular evaluation of NCAA drug-education and testing policies by an NCAA Association-Wide Committee composed of experts in sports medicine practice and research, sports law, and athletics administration.

Committee on Competitive Safeguards and Medical Aspects of Sports

Division	Committee Positions	Title	Name & Institution	Conference	Term Expiration
	Member	Assistant Director	Bob Colgate National Federation of State High School Association	Independent	SEP 2010
FBS	Member	Director of Sports Medicine	Ron Courson University of Georgia	Southeastern Conference	SEP 2010
FBS	Member	Head Athletic Trainer	Marc Paul University of Nevada	Western Athletic Conference	SEP 2009
FBS	Member	Head Team Physician, Primary Care Team Physician	Yvette Rooks University of Maryland, College Park	Atlantic Coast Conference	SEP 2010
FBS	Student-Athlete Rep.	Student-Athlete	Trisha Gibbons University of Nevada	Western Athletic Conference	SEP 2009*
FBS	Member	Team Internist	E. Randy Eichner, MD University of Oklahoma	Big 12 Conference	SEP 2011
FCS	Member	Team Physician	Tracy Ray Samford University	Ohio Valley Conference	SEP 2008
DI	Member	Associate Athletic Trainer	Brenna Ellis University of Texas at San Antonio	Southland Conference	SEP 2011
DI	Member	Head Team Physician	Ken Akizuki University of San Francisco	West Coast Conference	SEP 2010
I	Chair	Senior Associate Athletics Director	Jerry Koloskie University of Nevada, Las Vegas	Mountain West Conference	SEP 2008
II	Division II MC Rep.	Commissioner	Butch Raymond Northern Sun Intercollegiate Conference	Northern Sun Intercollegiate Conference	JAN 2012
II	Member	FAR, Professor	James Morgan California State University, Chico	California Collegiate Athletic Association	SEP 2009*
II	Member	SWA, Trainer/ Associate Professor	Janet K. Bailey Glenville State College	West Virginia Intercollegiate Athletic Conference	SEP 2010
FBS	Member	Head Team Physician, Associate Professor Dept of Orthopaedics	Scott A. Lynch Lebanon Valley College	Middle Atlantic States Collegiate Athletic Corp.	SEP 2009
III	Division III MC Rep.	Associate Dean for Academic Affairs	Charlie Wilson Olivet College	Michigan Intercol. Ath. Assn.	JAN 2009
III	Member	Head Baseball Coach, Asst. A.D., CSCS	Daniel J. Pepicelli St. John Fisher College	Empire 8	SEP 2010
III	Football Rules Committee Rep.	Head Football Coach/Assistant AD	Eric Hamilton The College of New Jersey	New Jersey Athletic Conference	SEP 2008
III	Member	SWA, Medical Coor./ATC/Facilities Coor	Debra R. Runkle University of Dubuque	Iowa Intercol. Athletic Conf.	SEP 2009

Mr. RUSH. Thank you very much.
Mr. Kanaby.

STATEMENT OF ROBERT KANABY, EXECUTIVE DIRECTOR, NATIONAL FEDERATION OF STATE HIGH SCHOOL ASSOCIATIONS, INDIANAPOLIS, INDIANA

Mr. KANABY. Thank you, Mr. Chairman and members of the subcommittee for this opportunity to be here with you today. Let me underscore right at the outset our willingness to cooperate, on behalf of our member State high school associations, with Congress, with any of the organizations that have been here at these hearings throughout today in terms of providing two working relationships that will gain opportunities to provide educational materials to our network of more than 18,500 high schools across this country and access to more than 7.3 million student participants and their respective coaches as well as their parents.

The federation, just very quickly, has three main purposes. One is to increase participation of young people in sports because we know—in this country's high schools—because we know they profit by these educational experiences, and we have done that for 18 consecutive years. Secondly, we work hard to minimize the risks of participation. And third, and most importantly, is to protect and promote the fact that sports experiences should contribute to the educational development of young people and not be a detraction towards their development as productive citizens in our society.

Certainly the issue of steroids threatens the integrity of sport. But to us, the much more important issue, and I have heard it voiced throughout today by even members of the subcommittee, is what happens and what occurs to the health and welfare of the young people who get involved in these kinds of things, and that is our paramount concern.

According to studies, more than 1 million young people in the United States have used steroids at least once in their lifetime. At least a third of those are said to not even be involved in interscholastic sports. But the most recent data released by the National Institute of Drug Abuse in December of 2007 reveals a steady decrease in the use of steroids by 8th, 10th and 12th graders since 2004. Quite frankly, we look towards the efforts of this subcommittee as shining a spotlight on this issue that has helped bring about those particular statistical results.

In addition to that are our own efforts by our own member State associations and the federation with the inauguration of a Make the Right Choice Program, begun in 2005, that has distributed materials, posters, pamphlets, booklets targeted towards coaches, targeted towards student athletes, targeted towards their parents, et cetera, on the dangers and risks of steroid abuse. We have arranged for a packet of this information to be delivered to each of the members of this subcommittee. And we would be more than happy to respond to any questions you might have regarding that.

Coaches are also a very, very critical key and important factor towards dealing with this issue at the high school level. And we have endorsed and adopted through our coach education program, which speaks about the steroid issue, to—adoption by 40 of our

member State associations, 51 in total—to make use of this program that can be done for them in that regard. One can say obviously that these are initiatives that seem to be having good results. But by the same token, I sit here and say to you that more needs to be done, that more should be done, and that, again, we are most willing to cooperate in any way to attempt to do that.

State athletic associations are sovereign entities with the National Federation. They are not subject to our control or influence beyond their voluntary decisions to work together with us. But many of them have made their own decisions on steroid testing. We heard earlier about the program that has recently been implemented in Texas with the University Interscholastic League that announced a 2-year program with the National Center For Drug-Free Sport, which also conducts testing for the NCAA and two other State associations. Prompted by a \$3 million a year appropriation by their State legislature, they will be doing random testing that will affect 40,000 to 50,000 young student athletes over the next two academic years in Texas.

Mr. KANABY. Two other State athletic associations, Florida and New Jersey, have already established testing programs, and both of these also utilize the services of the aforementioned National Center for Drug Free Sport. New Jersey pioneered the testing of high school athletes in 2006 and -7 targeting 5 percent of its State championship competitors, and although only one in 500 participants tested positive, the association has praised the deterrent effects of this program. Florida's policy is more random at the individual level, and targets athletes in the sports of football, baseball, and weight lifting. The Illinois association, as mentioned by the Mrs. Schakowsky at the earlier testimony this morning or earlier hearing this morning, Illinois will come on board in the '08-'09 year, and again like the New Jersey counterpart will test at their State championship level.

Many of our other State associations have independently done other things. Connecticut has endorsed a program of 1 year of ineligibility for any school that discovers a youngster that deals with steroids. In addition to that, they have constantly updated information on their Web sites and distributing to their member schools our materials, as well as other materials that provide information on an ongoing basis to them.

As previously indicated, we have no authority to demand that State associations implement steroid testing. Absent a federally mandated or funded program or some other plan, economic pressures are going to keep many of our State associations from being able to afford these kinds of high-tech quality testing programs. Such programs, as we know, are extremely expensive.

For the aforementioned reasons, we would make this suggestion and offer once again our cooperation, that any help that Congress could provide should be provided on a two-fold strategy. One is to provide the opportunity for States to gain resources in order to do the random testing that is presently underway in four of our member States at this time. It has proven to be a deterrent.

We just heard the deterrence statistics from the NCAA. It can work and it can help. But at the same time, too, we are educators, all of us, and there must be, there must be in our judgment a com-

panion piece that in addition to making testing available that we should also provide and make available more and more resources to educate our young people, to educate our coaches, to educate their parents, et cetera, on the dangers associated with these kind of things and eradicate the problem completely at the outset.

Thank you.

[The prepared statement of Mr. Kanaby follows:]

STATEMENT OF ROBERT F. KANABY

INTRODUCTION

Thank you Chairman Rush, Ranking Member Whitfield, and distinguished Members of the Subcommittee for the opportunity to testify today on the issue of steroid use among our young athletes. My name is Robert Kanaby and I have served as the Executive Director of the National Federation of State High School Associations (NFHS) for the past 15 years. Prior to that, I served 13 years as the Executive Director of the New Jersey State Interscholastic Athletic Association. I have also served as a high school teacher, coach, vice principal and principal. In my role as NFHS' Executive Director, I am aware of the health risks attendant to participation in interscholastic athletics.

THE PROBLEM

Steroid use threatens the integrity of competitive sport, but even more disturbing is the risk posed to the health of teenage athletes. The "bigger, faster, stronger" mentality glorified in our society leads a small percentage of youth to experiment with steroids and performance enhancing drugs for an "edge." Unfortunately, those athletes remain oblivious to the long-term health consequences of their actions. The availability of such illegal supplements is undeniable, yet I emphasize that the overwhelming majority of student-athletes subscribe to the education-based mission of high school sports. The lure of performance-enhancing drugs is usually outweighed by efforts of coaches, administrators, and organizations such as the NFHS with an educational interest in drug abuse prevention. Even so, several member state associations of the NFHS have recently enacted drug testing programs to combat the use of steroids within interscholastic athletics.

WHO ARE WE?

Before further discussing these measures, let me provide some context on the role of the NFHS within the high school community.

The NFHS is the national organization for high school athletics and performing arts programs in speech, debate, theater and music. Its purpose is to provide leadership and coordination of these activities to enhance the educational experiences of high school students and to reduce the inherent risks of participation. The NFHS promotes inclusiveness and sportsmanship, and its paramount goal is to develop good citizens through sport and activities. Its 51 members, consisting of the high school associations in each state and the District of Columbia, conduct championships and enforce eligibility rules in their respective jurisdictions. Unlike the NCAA, the NFHS does not perform enforcement functions. The NFHS promulgates voluntary rules of play for the nation's 7,000,000 high school student-athletes in sixteen different sports, in addition to another 4,000,000 students in performing arts programs. Another critical function of the NFHS is to obtain and disseminate health and safety-related information. The Sports Medicine Advisory Committee is one facet of the Federation that addresses the medical issues relevant to interscholastic athletics, including steroid use.

FACTS ON STEROIDS

According to the American College of Sports Medicine, "anabolic steroid use has been implicated in early heart disease, including sudden death." The ACSM also notes the potential for further damage to the heart, liver, and growth plates. Behavioral side effects, highlighted by the National Institute on Drug Abuse, include paranoia, delusions, and increased irritability and aggression (i.e. "roid rage").

According to studies, more than one million young people in the United States have used steroids at least once in their lifetimes. Other studies indicate over one-third of high school steroid users do not participate in interscholastic sports. The

most recent data released by the National Institute on Drug Abuse in December 2007 reveals a steady decrease in the use of steroids by eighth, tenth, and twelfth graders since 2004. Compared to the 2004 statistics, lifetime usage of steroids among today's eighth graders has dropped from 1.9% to 1.5%, from 2.4% to 1.8% among tenth graders, and from 3.4% to 2.2% among twelfth graders. This data is more optimistic than the numbers offered in the Mitchell Report, which relied on a CDC report from 2001 that cited usage of steroids among high school student-athletes between 3-6%.

NFHS EDUCATIONAL RESOURCES

This statistical improvement is one indication of a growing awareness among student-athletes of the dangerous consequences of steroid use. Such awareness may be attributed in part to the NFHS' enhanced educational outreach efforts that commenced in 2005 through an initiative titled "Make the Right Choice." The program offers brochures, DVDs, and posters for state athletic associations to distribute among their member schools. Separate resources are also available for coaches/athletes and parents.

By way of contrast, consider the story of Corey Gahan (featured in the January 21st, 2008 issue of *Sports Illustrated*). Although he did not formally participate in interscholastic athletics as a competitive in-line skater, Corey was injected by his father with steroids and human growth hormone for several years, starting at age twelve. The unique circumstances now confronting the eighteen year-old, including a father in prison and a recently expired two-year suspension from the U.S. Anti-Doping Agency, are the byproducts of uninformed and ill-intentioned parents. The NFHS' "Make the Right Choice" educational materials aim to elevate the level of awareness in such difficult situations.

Coaches are another segment of the high school community that should be well-informed on the risks associated with performance-enhancing drugs. The NFHS' Coaches Education Program has rapidly expanded in recent years, and forty state associations have either adopted or endorsed it. The cornerstone of the initiative is to educate coaches on emphasizing "teachable moments" that arise in the course of interscholastic competition. One "teachable moment" addresses steroid use, education, and prevention; the module includes a discussion between a football coach and student-athlete on the use of steroids.

STATE ASSOCIATION TESTING POLICIES

State athletic associations are sovereign entities; they are not subject to the control of the NFHS, and they make their own decisions about steroid testing. In January 2008, the Texas University Interscholastic League announced a two-year, \$5.6 million deal with the National Center for Drug Free Sport, which also conducts testing for the NCAA and two other state associations. Prompted by a \$3.0 million/year appropriation from the state legislature, the random tests are projected to affect between 40,000 to 50,000 student-athletes by the conclusion of the 2009 school year. The Texas policy results in a 30-day suspension following the first positive result (which is triple checked to ensure accuracy), while a subsequent violation results in a one-year suspension.

Two other state athletic associations, Florida and New Jersey, have already established testing programs, and both entities also utilize the services of the aforementioned National Center for Drug Free Sport. New Jersey pioneered the testing of high school athletes in 2006-2007, targeting 5% of its state championship competitors. Although only one of five hundred participants tested produced a positive sample (at a cost of \$150/test), the association has praised the deterrent effects of the program. Florida's policy is "random" at the individual level, but targets athletes in sports more prone to steroid usage (e.g. football, baseball, and weightlifting). A first-time offender in Florida would receive a 90-day suspension, although the scope of the program is considerably smaller than Texas, including only a \$100,000 budget.

The Illinois High School Association is the most recent state to adopt steroid testing procedures. In January, its Board of Directors approved a plan effective for the 2008-'09 academic year, and similar to New Jersey, testing will be conducted on participants in state finals competitions. A number of other state associations address steroid use without a comprehensive testing plan. For example, Connecticut adopted a regulation that denies athletic eligibility to student-athletes if their respective local school districts discover steroid use. Many other associations, such as the Iowa High School Athletic Association, distribute educational resources through their web-site for parents, coaches, and students.

LEGAL AUTHORITY AND PROPOSED LEGISLATION

The Drug Free Sports Act of 2005 appears to offer a foundation for federal legislation aimed at the testing of high school student-athletes. Section Five of the Act directs the Comptroller General to investigate testing measures utilized in high schools in order to assess potential expansion of the legislation to interscholastic athletics. It should be noted that the legal authority for the testing of high school athletes and performing arts competitors has been firmly established by the United States Supreme Court. The landmark case granting school administrators the discretion to test students in the context of athletics is *Vernonia School District 47J v. Acton*, 515 U.S. 646 (1995), while Board of Education of Independent School District No. 92 Pottawatomie, et al. v. Earls, 536 U.S. 822 (2002) approved the testing of high school students engaged in other extra-curricular activities.

However, a direct application of the Drug Free Sports Act of 2005 to the interscholastic community raises several concerns. Several fundamental differences between interscholastic athletics and professional sports limit use of the Act at the high school level. For example, random testing of student-athletes in the off-season, as mandated under the Act for professional athletes, is too burdensome on state high school associations. Instead, testing student-athletes in the state championship series is a preferred method, as reflected in the policies adopted by Illinois and New Jersey. The logic of such tests during the post-season is two-fold: (a) state championship events bring together a wide variety of student-athletes, often from different regions of the state. The ease in administration of tests is greatly enhanced with a concentrated sample population in one location. (b) Further, the competitors at state championship events qualified as a result of intense competition and in most instances are upper-echelon athletes. The overwhelming majority of high school athletes do not use performance-enhancing drugs, but the class of students participating at state finals and using performance-enhancing drugs may be greater than at a typical regular season contest. Thus, the deterrent value of testing would be stronger at the championship level.

Of course, another consequence of implementing more aggressive measures at the high school population would be an increase in costs. As previously mentioned, the NFHS has no authority to demand that state associations implement steroid testing policies. Absent a federally mandated and funded program, economic pressures will keep many state legislatures from adopting testing programs. The consequences of "false positives" are so severe that only the highest quality testing programs are acceptable. Such programs are very expensive.

CONCLUSION

For the aforementioned reasons, I urge that any help from Congress would be focused on a two-fold strategy. The first would be to support the deterrent that random testing provides and the second, very critical companion is a strong educational outreach designed to support the deterrent with accurate and effective educational initiatives. An example would be funding the development of deterrence strategies which target not only student-athletes, but non-athletes as well. The sad stories of youth like Corey Gahan are proof that this problem extends beyond the realm of athletics conducted by the nation's high schools. I thank the Subcommittee for the opportunity to be here today. I look forward to answering your questions.

Mr. RUSH. Thank you very much, Mr. Kanaby. Mr. Waldrop, please for 5-minute.

STATEMENT OF ALEXANDER M. WALDROP, CHIEF EXECUTIVE OFFICER, NATIONAL THOROUGHBRED RACING ASSOCIATION, LEXINGTON, KENTUCKY

Mr. WALDROP. Mr. Chairman, Ranking Member Whitfield, members of the subcommittee, I am Alex Waldrop, President and CEO of the National Thoroughbred Racing Association. The NTRA member racetracks and horsemen conduct about 90 percent of the thoroughbred races in North America. While I represent the NTRA, the medication and testing information contained in my remarks is industry-wide in scope, and includes statistical data from standardbred, quarter horse, and thoroughbred racing.

Mr. Chairman, the horseracing industry tests every winner in every race every day. That translates to 130,000 horses every year. We screen for up to 200 drugs in each sample. Our labs test for a variety of drugs, including stimulants, narcotics, bronchodilators, and anti-inflammatories. Collectively, racing spends some \$36.5 million annually on equine drug testing and on research and development. We do this because all industry stakeholders agree that equine medication and testing are national issues that are central to our industry's integrity. Horseracing and its 38 State regulatory bodies provide oversight for drug testing under the model rules of the Association of Racing Commissioners International.

The RCI develops its model rules in conjunction with the Racing Medication and Testing Consortium. The RMTC is comprised of 23 industry stakeholders, groups including regulators, veterinarians, chemists, horse owners, trainers, breeders, and racetracks from all racing breeds. The model rules include a classification system, which defines five classes of drugs and therapeutic medications. Class One drugs are nontherapeutic and have a high probability of affecting performance. There were only three Class One drug positives in the entire country in 2006. Most drug positives are caused by mistakes in judging withdrawal times for prescribed medications, which have a relatively low probability of impacting performance. These are the Class Four and Class Five medications.

RCI and RMTC have also jointly developed model penalties based upon classifications of the drugs involved. In 2007, the RMTC and RCI completed development of a model rule that will effectively prohibit the use of anabolic steroids in racehorses. While FDA-approved anabolic steroids may have some therapeutic value in treating racehorses, horsemen, tracks, and breeders all agree that racehorses should not compete on anabolic steroids. In practice, that means that anabolic steroids must be withdrawn from a horse's medication regime at least a month before its next race. This ensures that any effect on the horse will be eliminated by the time of the race.

The purpose of the model rule regarding steroids is to ensure that these medications are used solely for therapeutic purposes, and none is used in a manner that enhances the performance of any horse in any race. The model rule has been or is being adopted by Arizona, Arkansas, California, Colorado, Delaware, Illinois, Indiana, Iowa, New York, Pennsylvania, Virginia, and Washington. Florida, Kentucky, Maryland, and Texas are among the many other States that are expected to support the model rule as well. We continue to work with the remaining jurisdictions to secure their support.

The RMTC is conducting additional research that will provide further scientific support for the model rule. The practical issues of adoption and uniform enforcement of the model rule still remain, but the NTRA, the RMTC, the RCI, on behalf of the thousands of industry constituents they represent or regulate, are united in saying be in compliance with the model rule by December 31, 2008.

The RCI and the RMTC provide the horse industry what every sport needs, a credible, scientifically-based, industry-led forum for drug and medication issues. Is our testing protocol perfect? No. Can it be improved? Absolutely. But the major industry stakeholders

are united in their commitment to address drug and medication issues on a national basis through the RMTC and the RCI. The RMTC has served as a catalyst for the adoption of many significant drug and medication rules in racing States, and it is providing that same leadership in the regulation of anabolic steroids.

We thank the committee for this opportunity to report to you on the progress made by the horse industry. Thank you very much.

[The prepared statement of Mr. Waldrop follows:]

STATEMENT OF ALEXANDER M. WALDROP

Mr. Chairman, Ranking Member Whitfield and Members of the Subcommittee, I am Alex Waldrop, President and Chief Executive Officer of the National Thoroughbred Racing Association. The NTRA is a not-for-profit trade association for Thoroughbred horseracing. Its members include 65 racetracks and 40 national and state horsemen's groups drawn from 23 states. NTRA member racetracks and horsemen account for about 90 percent of all races run in North America.

In 2007, nearly 107,000 U.S. horses made 918,000 starts in 116,000 races. Our industry tested at least one horse from every one of those races. We test every race, every day, screening for up to 200 drugs in one sample. Our labs test for a vast array of drugs, including stimulants, narcotics, bronchodilators and anti-inflammatories. Collectively, racing spends between 30 and 35 million dollars annually on equine drug testing at 18 private or university laboratories. In addition, the industry annually spends almost \$1.4 million on research and development into new tests and testing procedures necessary to stay current in the detection of performance enhancing drugs and medications.

The horse industry has defined five classes of drugs and medications. Class One drugs have no accepted medical use in the racehorse and a high potential for performance enhancement. These drugs have no place in racing. Class Two drugs are not generally accepted as therapeutic agents in racing horses and have a high potential to affect performance. Class Three drugs may or may not have generally accepted medical use in the race horse, but their pharmacology suggests they have less potential to affect performance than Class Two drugs. Classes Four and Five are reserved for therapeutic medications with less potential affect performance than those in Classes One, Two or Three. Class Five medications, for example, are therapeutic medications that are used to treat common ailments such as ulcers, and have established concentration limits.

Only three Class One positives were returned in the 130,000 samples tested across the United States in 2006 (the latest year for which complete statistics are available). Only 27 positives were returned for Class Two or Three drugs in the same sample group. Most drug positives are caused by human error in judging withdrawal times for prescribed therapeutic medications - Class Four or Five medications - prior to a race.

While NTRA is not a "league office" with the power to sanction teams or players, the organization uses its convening authority to address a broad range of initiatives of national importance to the horseracing industry. Equine medication is a national issue that all stakeholders agree is central to our industry's integrity.

As such, racing and its 38 state regulatory bodies have been proactive in identifying and banning illegal, performance-enhancing drugs and regulating the use of prescribed therapeutic medications that may affect a horse's raceday performance.

As a sport and a pari-mutuel wagering industry, horseracing is regulated at the state level by individual racing commissions. These organizations provide oversight for drug testing under the model rules of the Association of Racing Commissioners International, known as RCI. RCI develops its model rules in conjunction with the Racing Medication and Testing Consortium, or RMTC.

The RMTC is governed by a Board of Directors consisting of 23 industry stakeholder groups including regulators, veterinarians, and chemists, as well as horse owners, trainers, breeders, and racetracks from all racing breeds including Thoroughbreds, Standardbreds and Quarter Horses. In addition to serving on the Board of the RMTC, the NTRA provides funding for RMTC and communicates and endorses RMTC policies to its membership.

The RMTC together with RCI have done important work in the area of therapeutic medications and drug-testing policy. These organizations are largely responsible for the development of the drug classification system I alluded to earlier. They also jointly develop model penalties for drug violations. The nature and severity of penalties for drug violations are determined by the classification of the drug in-

volved, with due consideration for aggravating and mitigating circumstances, such as the potential of the drug to influence a horse's performance or whether the trainer acted under the advice of a licensed veterinarian.

Traditionally, penalty guidelines have applied to the trainer as the "absolute insurer" of a horse's welfare and safety. However, penalty guidelines have recently been reinforced and extended to include sanctions for owners and veterinarians as well as trainers.

The RMTC and RCI have worked closely over the past several months on a policy regarding steroids. With the full support of our industry, they have called for the adoption of model rules that would effectively prohibit the use of anabolic steroids in racehorses by the end of 2008.

Let me be clear, anabolic steroids have therapeutic value in treating racehorses. They are most often prescribed when a horse is recovering from illness or surgery. However, horsemen, tracks and breeders all agree that racehorses should not compete on anabolic steroids.

In practice, that means that anabolic steroids must be withdrawn from a horse's medication regimen at least a month before its next race. This ensures that any benefit the animal received as a result of the administration will be gone by the time of the race. In addition, minute levels of only four individual anabolic steroids will be permitted in post-race samples. Two anabolic steroids, stanozolol and boldenone, are approved by the United States Food and Drug Administration for use in horses. Boldenone and two other accepted anabolic steroids, nandrolone and testosterone, are also naturally occurring substances. The model rules state that no more than one of these anabolic steroids may be present in any given sample. Any other anabolic steroid is simply illegal.

The purpose of the model rule is clear: to ensure that these medications are used solely for therapeutic purposes and none is used in a manner that enhances the performance of a horse in any race.

The model rule has been or is being adopted by Washington, Arkansas, Iowa, Illinois, California, Indiana, Pennsylvania, Delaware, New York and Virginia. Kentucky, Texas, Florida and Maryland are among the many other states that are expected to support the model rule as well. The states mentioned here account for nearly 60 percent of races run in the United States and we continue to work with the remaining jurisdictions to secure their support. The current rule is based on 30 years of science and testing in European and Asian countries utilizing urine samples. Our industry supports further research to provide threshold levels and withdrawal times in both urine and blood plasma. Testing in plasma may be more accurate and less expensive. RMTC currently is funding research at the University of Florida that will provide guidelines for plasma samples. Similar research is underway in New York, Texas and Pennsylvania.

What remains at issue is the very practical concern of uniform enforcement of the model rule while we await additional research. As previously mentioned, a number of states have already adopted the model rule. Others want to wait until the science is more complete. NTRA, RMTC and RCI are united in saying, "be in compliance by December 31, 2008."

Working in conjunction with the RCI, the RMTC provides the horse industry with something that every sport needs - a credible, scientifically based, industry-led forum for addressing the multitude of drug and medication issues presented by modern day veterinary medicine. The RMTC has proven to be the best way to balance the legitimate interests of our industry's numerous constituencies. The horse industry is united in its efforts to protect the health of our equine athletes and the integrity of our sport.

Mr. Chairman, we appreciate this opportunity to speak to this committee on this important issue and welcome your questions.

Mr. RUSH. At this point, before we begin questioning, I would like to acknowledge Mr. Frank and Ms. Brenda Marrero. They are in the audience. Their son Efran tragically died as a result of steroid use. Mr. and Mrs. Marrero founded the Efran Anthony Marrero Foundation, dedicated to educating young people and others on the dangers of steroids. We want to acknowledge them, please. Thank you so much for taking your time out to be a part of this hearing. Thank you for the fine work that you do on behalf of America's young people. Thank you so much.

I want to begin the questions as I recognize myself for 5 minutes of questioning, and I want to ask each panel to respond with a "yes" or "no" answer to the following questions. There are three of them.

Do you support Federal legislation mandating uniform testing procedures for all sports? Beginning with Mr. Scherr.

Mr. SCHERR. Yes.

Mr. RUSH. Mr. Tygart?

Mr. TYGART. Yes.

Mr. RUSH. Mr. Brand?

Mr. BRAND. Yes, with a condition. And the condition is that we are concerned that a generalized Federal regulation will weaken our program. For example, I can imagine that penalties would be such that they would be less stringent than we have now. So under those conditions, when you try and treat everyone the same, those who have a very strong program in place may actually find their program weaker.

Mr. RUSH. Mr. Kanaby?

Mr. KANABY. We would support the exact same comments of Dr. Brand. In addition to that, there must be some consideration given at our level, due to the total numbers involved with our level in terms of any mandated program that would be underfunded.

Mr. RUSH. Yes, sir.

Mr. WALDROP. Mr. Chairman, we think the public-private partnership between the Racing Commissioners International and the Racing Medication and Testing Consortium provide the right model today to address these issues on an industry-wide basis, with the scientifically-based, industry-led approach to this problem.

Mr. RUSH. Is that no or yes?

Mr. WALDROP. That would be not now.

Mr. RUSH. Not now.

Mr. WALDROP. Not at this time.

Mr. RUSH. Not at this time. Okay. All right.

Mr. Tygart, in your written testimony you state that while the professional leagues' anti-doping policies have significantly improved over the last several years, they still fail to fully implement all the basic elements of the most effective programs. Can you please elaborate? And what basic elements do they fail to implement?

Mr. TYGART. Yes, sir, Chairman, I think the basic elements I outlined in my oral testimony and also my submitted testimony, what I think I dubbed the matrix of effectiveness. It is independence; it is transparency; it is effective out of competition, out of season, no advance notice testing; it is funds devoted to research; it is funds devoted to education; it is partnerships with law enforcement that would allow the bringing of nonanalytical cases, or in my mind and I think the experts' mind, including Senator Mitchell, the matrix of effectiveness of the most effective programs in the world.

Mr. RUSH. I want to ask you, Mr. Tygart, and Mr. Scherr, can you please tell us the current state of a test for HGH? Is it accurate and reliable? How soon must it be administered after injection? Is it commercially available?

Mr. TYGART. There is a reliable test for human growth hormone. It is a blood-based test. It has been used at the Athens 2004 Olym-

pic Games, it has been used at the 2006 Torino Olympic Games, we fully expect it to be used also this summer in the 2008 Beijing Games. The data from those tests has been shared amongst the WADA Working Group. It convened in April of '05, convened again in April of '07, have a meeting scheduled for April of this year. It is not yet worldwide available because there is a kit, and Congressman Burgess, it is an amino assay kit, actually a sandwich kit if you are familiar with that assay. It is in production. Production has not been—has been slower than we all expected, slower than we all wanted, but we fully expect that that will be available in the next coming months.

And let me make one more point about human growth hormone. It is a strategy to address it. And you don't limit your strategy just to the ability to test for it in the event, like we see there is only a blood-based test. You have to have a broader strategy. And I think that broader strategy includes testing for other things, and having other prohibited substances on your list like insulin. Because all of us in the trenches know athletes who use human growth hormone are also going to use insulin. And so you have to prohibit insulin in your list. And there is a test that is becoming quickly available for insulin. Other things like IGF-1 similarly are being stacked with human growth hormone, and you have to prohibit those also.

And then the second strategy is to have the ability to bring non-analytical positives. When you have evidence—we have suspended athletes for human growth hormone. When you have reliable evidence and you have a process by which that evidence can be introduced, challenged, a full due process, you ought to then be able to suspend and discipline athletes for their use of human growth hormone even if you don't have a positive test for it.

Thank you.

Mr. RUSH. The chairman yields back and now recognizes the ranking member of the subcommittee for 5 minutes of opening questioning, Mr. Whitfield of Kentucky.

Mr. WHITFIELD. Mr. Chairman, thank you very much. And I want to thank the panel for being with us today. We appreciate your time, and look forward—we enjoyed your opening statements and your comments that you might have to assist us. And Alex Waldrop, I certainly want to congratulate you on being appointed the new President and CEO of the National Thoroughbred Racing Association. I know you haven't been there very long. But I want to ask you a couple questions.

In my opening statement I referred to a comment made by D.G. VanClief, who was the former President and CEO of the National Thoroughbred Racing Association. He said this a few years ago. We have endeavored to adopt uniform rules governing the use of medications for years without success, despite the clear need to do so. Do you agree with that statement or not?

Mr. WALDROP. I do not agree with that, Congressman.

Mr. WHITFIELD. And why is that?

Mr. WALDROP. Well, since that statement was made a great deal of progress has been made by our industry. Before you I have placed a document, it is entitled Racing Medication Timeline.

Mr. WHITFIELD. I don't have a lot of time. I have got about 4 minutes, and it goes quickly.

Mr. WALDROP. Well, refer to that document.

Mr. WHITFIELD. But basically, to stipulate, I guess you would say that 32 out of 38 racing jurisdictions have adopted a uniform rule. Is that correct?

Mr. WALDROP. Yes, sir.

Mr. WHITFIELD. Okay. And in our discussions yesterday we did also stipulate that every State had a variation of that rule, and that the penalties were not always the same.

Mr. WALDROP. I would not stipulate that. I would say that the variations are very slight, and that we are making progress on model penalties.

Mr. WHITFIELD. But not every racing jurisdiction has adopted it?

Mr. WALDROP. No, sir. You are correct.

Mr. WHITFIELD. And in fact, the State senate in Louisiana just a couple of days ago reversed the adoption of this rule by the racing authority. Is that correct?

Mr. WALDROP. Congressman, I think they did that on a procedural technicality that was adopted under an emergency—

Mr. WALDROP. All I know is that the newspaper says that the Louisiana Racing Commission adopted the model rule in December, and the Louisiana Senate Commerce Committee reversed the Commission's adoption of the regulations for failure to follow procedural rules. So whatever the reason, they reversed it. And now there has been a lot of discussion that government should not be involved, legislative bodies should not be involved in setting guidelines, and yet that is precisely what happened in Louisiana. They made the decision that no, there won't be a model rule here for now. And I know from personal experience that in Kentucky when they strengthened the rule in Kentucky, which had one of the most lenient in the country, the HBPA, after fighting it all the way, went to the legislature and tried to reverse it in Kentucky. But because of Jim Bruce particularly, they were not successful in doing so.

So we know that in Europe and in Asia and Australia and Japan and Hong Kong and Dubai, not in South America, but in those jurisdictions they do not allow anabolic steroids in horseracing. In fact, England adopted that policy like 30 years ago. So would you agree that there is a need to abolish steroids in horseracing in the U.S.?

Mr. WALDROP. There is a need to remove steroids from competition, absolutely. The model steroid rule that has been proposed is exactly what needs to be done.

Mr. WHITFIELD. And none of us object to using steroids for therapeutic reasons.

Mr. WALDROP. Correct.

Mr. WHITFIELD. But if a horse is going to show positive for steroids and he is racing then he shouldn't be racing?

Mr. WALDROP. That is correct.

Mr. WHITFIELD. Now, the industry came to Congress a number of years ago and asked to pass the Interstate Horseracing Act so that simulcasting could go into effect. And simulcasting provides a large portion of the wagering for horseracing today. The handle. And Congress did not set any kind of guidelines with that author-

ity. So do you think it would be unreasonable for Congress to say if you are going to benefit from simulcasting, and we know that your organization cannot mandate anybody to do anything, so would it be unreasonable for Congress to mandate that if a State does not adopt some of these uniform rules by a date certain that they would lose their simulcast opportunities?

Mr. WALDROP. No, that would not be unreasonable.

Mr. WHITFIELD. Sir?

Mr. WALDROP. No, sir, it would not be unreasonable.

Mr. WHITFIELD. Okay. Thank you very much. My time has expired. Thank you.

Mr. RUSH. The Chair recognizes the gentleman from Nebraska, Mr. Terry, for 5 minutes.

Mr. TERRY. Thank you. Mr. Scherr, I have to ask you questions just as to where you went to college. Would you please state that, please?

Mr. SCHERR. University of Nebraska at Lincoln.

Mr. TERRY. Thank you. That makes you the brightest of both panels.

Mr. SCHERR. I will concur.

Mr. TERRY. Mr. Scherr, by the way, is a legend in Nebraska. So we call him the legendary Jim Scherr, some of us sports fans do. Even though you stated in your testimony that you are not here to compare, and I don't want to do it in a na-na-na type of way, but can you outline for me from what you understand of at least the NFL or baseball, how their program, drug testing program does compare to the U.S. Olympics? Because the Olympics is kind of the, no pun intended—well, yes, it is—gold standard. They get the gold medal for being out there, and so does the NCAA. So how does it compare? What do they need to do to mirror your standards?

Mr. SCHERR. Without getting into the minutiae of the specific differences in all elements of the program, the penalties for having a positive test are certainly much more lenient across the board than those in the Olympic movement. For example, our first offense is 2 years. A second would be a lifetime ban. And those certainly would seem to be much more effective as deterrents to the use of performance-enhancing drugs. And I think the major differences could be categorized in degree of independence of the testing agency, the degree of transparency in the operations of the testing agency, and the numbers of true no advance notice testing, both in-season and out of season.

Mr. TERRY. We had a discussion earlier about the transferring from urine to blood. What is your understanding of the science as it exists at this moment in time in using blood to be able to do a better job of finding HGH or other performance-enhancement drugs that may be masked in urine?

Mr. SCHERR. Well, as a University of Nebraska graduate, my understanding of the science is pretty limited.

Mr. TERRY. But far more advanced than most others.

Mr. SCHERR. Yes. Yes. You know, there is not an effective urine test at this time for HGH. I think certainly one of the goals of the Partnership for Clean Competition will be to develop a more readily, easily used test for HGH should that be possible. I think, though, that while it is more invasive and much more difficult in

terms of potential health hazards and issues with athletes' rights, the blood testing is a much more effective screen for performance-enhancing substances than urine tests at this time.

Mr. TERRY. Do the Olympics do any blood testing?

Mr. SCHERR. Very limited at this point in time, though WADA and the HGH tests that Travis had referred to previously in some initial majors is moving in that direction. And I think as long as the testing stays as it is, we will try and move in that direction. And I could refer that to Travis for probably a more thorough answer.

Mr. TERRY. Dr. Brand—well, just in my few seconds that are left, how about the NCAA? Looking at blood testing?

Mr. BRAND. We have discussed it. We do not use blood testing right now. I think our members may find some privacy issues in it. We would prefer to wait for, for HGH, a urine test. We are supportive of what the Olympics is leading in terms of movement towards that test, and once it is developed we will certainly adopt it. But at this point we do not have blood testing.

Mr. TERRY. Thank you. I yield back.

Mr. RUSH. The chairman recognizes now the gentleman from Florida, Mr. Stearns, for 5 minutes.

Mr. STEARNS. Thank you, Mr. Chairman. Let me ask you folks, you perhaps heard the first panel when I tried to indicate that it would be important that they adopt the United States anti-doping policy, the USADA's stringent testing system. And they all seemed to hem and haw, and they didn't say they wanted to do that. In fact, they thought—one of them said they thought theirs was better. And then when I talked to the players association for baseball, they indicated that they couldn't, and that there was some peculiarities about the way the sport is configured that they couldn't do it.

So I guess the question I would have for you folks is, is it possible for professional sports to adopt the stringent testing system of USADA, and if not, why not? Anybody like to answer that?

Mr. TYGART. This is Travis from USADA, CEO of the United States Anti-Doping Agency. I don't see any reason why not. In fact, the players mentioned in my oral testimony frequently play under our regulations 12 months before the games. You are going to see this summer in Beijing the USA basketball team. It has the NBA all-stars that played 2 weeks ago down in New Orleans.

Mr. STEARNS. Good point.

Mr. TYGART. They live under these rules without complaint. And it includes—we have their whereabouts. We show up at their houses 24 hours a day, 7 days a week, 365 days a year without notice. And they don't complain. They give us the samples. In fact, our experience has been with whether it is those professional athletes that want to represent their country in Olympic sports or our day-to-day Olympic athletes, they want the world to know—if they are truly clean, they want them to know that they are clean. And they have no problem agreeing to the toughest standards in the world.

Mr. STEARNS. So they are already complying, most of them are already complying when they do those games. Now, I asked you the question about HGH and testing of it. And they said that there is

no way to test for it today. So the question is can you test for it today? Is there any credible test for it?

Mr. TYGART. We answered this previously, but there is currently a reliable blood-based test.

Mr. STEARNS. Okay.

Mr. TYGART. As I indicated previously, we used it at the 2004 Athens Games the, 2006 Torino Games. And we fully expect it to be available for the Beijing Games in 2008. The reason it is not yet available in the United States is the kits that are required for use in the laboratories to analyze the blood for HGH, the production of those kits has been slower than anticipated. We expect those to be hopefully available in the next coming months for worldwide distribution.

Mr. STEARNS. Have there been any positive tests when you test for HGH? I mean any negative tests rather?

Mr. TYGART. There has been no positive tests for HGH. As I indicated previously, there has been suspensions for use of HGH, but not based on a positive test.

Mr. STEARNS. Okay. Okay. I guess the feeling is that if you are a professional athlete you could use HGH today with impunity. You couldn't be caught. Isn't that true?

Mr. TYGART. I think it depends on the league. I believe some of the leagues have the ability to bring nonanalytical positives, and that you can discipline someone for use, particularly if they are convicted in a State or Federal court of distributing or possessing or using that substance. But you have to look at—and I don't know off the top of my head the different policies in the leagues, but I know that the NFL, for example, I believe has the ability to discipline someone on a what is known in our world as a nonanalytical positive.

Mr. STEARNS. I guess nonanalytical positive means based upon procedures, and not based upon testing.

Mr. TYGART. It is just evidence. It could be circumstantial, it could be direct, but it does not include a positive test.

Mr. STEARNS. Right. Okay. And so I think what you are telling me is that the Olympic standard is probably stronger than the professional sports, and the sports could adopt yours, but they want to keep theirs separate and individualized. So for that reason we in Congress just have to take their word for it that they are having a high standard like the Olympics. Is that a fair thing to say, I have to take their word for it that they are using a high standard like the Olympics?

Mr. TYGART. It is a tough question to answer, but I think that's fair. I mean the policies are available to a certain extent, so you can make some conclusions based on the policies. But the question previously about the transparency of how those policies actually work in practice, it is really difficult to see.

Mr. STEARNS. Particularly when you have the adversarial union and the Commissioner trying to do things sometimes at odds with the players wanting their privacy?

Mr. TYGART. I think the best place to find that answer, Congressman, is I think it is about page 86 of the Mitchell Report, when you see the day-to-day struggle of what to do with evidence that comes up between the players and the unions, and how they re-

spond to that evidence. Whether it is a reasonable suspicion test or turning something over to law enforcement that is discovered is a pretty good, I think, description of that day-to-day conflict and negotiation that happens between management and unions.

Mr. STEARNS. The bottom line is we have had 16 years of this in which steroids have been used pretty aggressively in sports, and nothing was done about it, and now we have had hearings and we finally get their attention, and they are doing it. Now, unfortunately we have all these athletes that are of dubious achievement based upon these steroids, and we are trying to establish forward a positive plan, and I think we have something in place.

So I thank you, Mr. Chairman, and I yield back.

Mr. RUSH. The Chair now recognizes the gentleman from Pennsylvania, Mr. Pitts—I am sorry, the gentleman from Texas, Mr. Burgess, is recognized for 5 minutes.

Dr. BURGESS. Thank you, Mr. Chairman. I won't use the entire 10 minutes, but Mr. Kanaby, if I could ask you, you referenced some of the State legislation that has gone forward. I mentioned the Texas law that was passed the last legislative session in Texas. Do you think that is—is that a reasonable approach that some of the States are taking as far as their—the testing of students at the high school level or athletes at the high school level?

Mr. KANABY. I would think that is a very reasonable position to take. They are doing what we suggested in our opening statement. Basically, they are not only going to be testing and using that test as a deterrent, because young people need an opportunity to say to their friends, no, I might be picked at random, so I am not going to do that, and resist that kind of pressure. And it becomes a very, very good thing for that young person to be able to do that. But in addition to that, they have also mandated an educational program, both for coaches and also for individual young people to go through.

So I think that combination presents the best approach towards dealing with this situation in terms of changing the mindset and changing the culture of sport along these lines.

Dr. BURGESS. Yeah, I think the Texas law did include that educational component. I would agree with you that that is terribly important.

Now Mr. Fehr mentioned in his response to a question that because the usage and the availability in fact of some of these compounds is so widespread and so ubiquitous in society that simply this committee providing legislation dealing with the use of performance-enhancing medications at the professional level would not have the impact at the high school level, or that impact might be diminished. But still that is a worthwhile thing to pursue, would you not agree?

Mr. KANABY. In the discussions that we have had with the three States that are—the two States that have been active and with our folks at the UIL, that they feel very, very strongly that the deterrent factor of a potential test is a strong, strong proponent towards limiting and discouraging use.

Dr. BURGESS. But in addition to the deterrent factor of the State-mandated testing, if there were Federal legislation regarding the impact of performance-using medications on the career of a profes-

sional athlete, would that also not have an additional effect as far as discouraging someone from the use of those compounds?

Mr. KANABY. It could have that, again depending upon what form and format the Federal legislation takes, which is why we suggest, if anything is going to be done, that there be a strong link to both the deterrent factors as well as the educational programs involved.

Dr.BURGESS. Point well made.

Now, in the Boston Globe article of February 19th that I referenced, I got the impression from your testimony that perhaps their figures are a little bit dated. But I mean they gave some pretty astoundingly high figures for females in high school and middle school who might be inclined to use performance-enhancing medications. Is it your opinion or did I understand it is your opinion that this has improved from the time that these figures were quoted from the CDC and from Oregon?

Mr. KANABY. We believe so. I think those statistics, sir, were back to 2003, study that was done in 2003. I cited some statistics as far as December of 2007. And is the trend right? Yes. Is the problem solved? Absolutely not.

Dr.BURGESS. To what do you attribute the reduction in usage that you have observed?

Mr. KANABY. Well, quite frankly it has been a very high visibility item as a result of the work of this committee, for one thing, as far as the general public is concerned. There are also, through our member State associations, as well as our own organization that have undertaken very, very strong initiatives to develop materials that are applicable to both young people—for example, we distributed and the UIL distributed to all its member schools throughout the State, and it was mentioned in the State Legislature in Texas the program that we developed for parents, providing to them using the—working with the Hooton Foundation, for example, as well as our own folks. We very graciously had the services of Tony Dungy, the coach of the Indianapolis Colts, who prepared a video for us for high school coaches, and talking to them about what it meant and cheating and et cetera. And we used a NFL quarterback to speak to student athletes in a separate DVD.

So all of these resources, the other kinds of things that our member State associations, we do believe are having an impact. And it is encouraging to us, and we think that if we redouble, triple our efforts along these particular lines we can really start to see even greater inroads in this regard.

Dr.BURGESS. So you attribute a lot of that to the educational effort that you put forth?

Mr. KANABY. Yes, we do. Young people, they are sharp, and when presented with facts that basically are not unreasonable in terms of not necessarily just being scare tactics, but hearing their coach talk about these things, hearing people that they respect and represent, strengthening their parents to be more observant in terms of things that they see in the development of their young people, it is a multi-faceted approach that can have good, positive results.

Dr.BURGESS. Maybe we ought to turn the anti-tobacco efforts over to you and your crew, because it sounds like you have been

much more effective. But thank you very much, and I will yield back.

Mr. KANABY. Thanks.

Mr. RUSH. Now the Chair recognizes Mr. Pitts of Pennsylvania for 5 minutes.

Mr. PITTS. Thank you, Mr. Chairman. Mr. Waldrop, I was interested in your response to Congressman Whitfield's question about the Interstate Horseracing Act that gives benefits in interstate wagering. Would you just reiterate again? The question, as I understand it, was is there any compelling reason why we should continue this benefit in the absence of real movement to a uniform testing and enforcement policy?

Mr. WALDROP. Well, yeah, I believe that was the question. My response was it would not be unreasonable to make compliance a condition for being able to utilize the Interstate Horseracing Act. The lawyer in me would hasten to point out that the Interstate Horseracing Act does acknowledge that its primary purpose is to uphold States rights in controlling what happens within its borders where parimutuel wagering is concerned. So you have to balance the interests of the States with the Federal Government's interests in interstate commerce. And that is what really this is all about. It is looking to the States to step up first. And if and when they don't step up, then it is incumbent upon the Federal Government to step up.

My point this afternoon is to say that we think finally we are getting that confluence of activity, that group of States that are getting behind the model rules, and we are seeing compliance and support that we have never seen before not because of the pressure of Congress so much as the pressure of our owners, who spend billions of dollars a year to buy horses, and the pressure of our horseplayers, who last year wagered almost \$15 billion. They are demanding that our game be on the up and up. And that's where the RMTC and RCI are coming from. We are listening to our fans, we are listening to our owners, and we are trying to respond privately in the public-private partnership with RCI, State regulators, and with the RMTC in a fashion that makes sense and that convinces the industry that we are serious and we are going to get real.

And I can tell you the NTRA, our charge is to be a fan-based organization, to grow this business. And without integrity we can't grow it. And that is why I am here today. And that is why, since I have been at the NTRA, medication has been at the top of the list of our issues, because we have got to get a handle on this. We have got to get serious as an industry about adopting the model rules nationwide. And I think we are doing that.

And we appreciate Congress' interest. We appreciate your scrutiny in this matter. I think we have a good story to tell, and it gets better by the day, and I am proud to say that.

Mr. PITTS. Now, when you state that some States will not adopt the model rule until more science is available, what science or research are they waiting for? Is this just an excuse not to adopt the model rule?

Mr. WALDROP. It is interesting to hear the discussion about human growth hormone and the distinction between testing urine

and testing blood plasma. That is exactly the situation we find ourselves in horseracing where steroids are concerned. The model rule was based upon European science, and European science relies upon urine as the medium for the test. There is evidence, and some reasonable people believe that the right way to test for steroids is in plasma. That test is not yet available. It should be available by this summer. In fact, some preliminary data should be available before then. If and when we get the model rule with withdrawal times and threshold levels in both urine and plasma, you will see wholesale adoption of that model rule. And you will not see people dragging their feet. I believe what horsemen are telling us is we want a rule, we want a bright line, we want to know exactly what we need to do to comply, and we will comply.

I have read every bit of the—I read all the clips. I know what people are saying around the country. I have yet to hear a horseman say we do not want to stop the use of steroids. What they say is we want to test in plasma. That is a reasonable position. And I think we ought to—and the RMTC is taking steps and they will have that research so that by the end of the year we think we can get full compliance nationwide.

Mr. PITTS. Now, can States forbid a horse to enter their races if they have competed in other States that have not adopted the model rule?

Mr. WALDROP. I suppose they could. That would be unprecedented. I believe that the most important reason for the model rule is to get uniform and nationwide compliance so that horses can move freely from State to State. That would be a detriment to racing in both States, the State that doesn't come on board and the State that puts up that barrier. I think the more important point here is as more and more States adopt the model rule on steroids, other States that don't comply have to if they want their horses to compete. Because you can't use steroids in one State and take that horse to a State—to another State if that State is banning steroids because you are going to test positive.

Mr. PITTS. I don't have much more time. Do you keep statistics to ensure you have the information to protect the health of the racehorses? And how many horses die annually at a track or as a result of a race?

Mr. WALDROP. I don't have that data.

Mr. PITTS. Do you keep those statistics?

Mr. WALDROP. Those statistics are being developed. We as an industry are working to collect that data. But right now that data isn't freely available. A group is working with the Jockey Club to make sure that we have that available so that we can rely on it. But today I can't tell you definitively how many horses are injured or who die on the racetrack, no, sir.

Mr. PITTS. My time is up. Thank you. Thank you, Mr. Chairman.

Mr. RUSH. Thank you, Mr. Pitts. The Chair will allow for a second round of questioning. I recognize the ranking member, Mr. Whitfield, for 5 minutes.

Mr. WHITFIELD. I just want to clarify just a couple of things. Mr. Waldrop, you had mentioned that a lot of the horseowners have come to you and are insisting on the plasma test. I presented today in my opening statement e-mails received from a lot of owners

around the country who actually are asking for a Federal ban of anabolic steroids. And I was reading an article the other day up at New Bolton at the University of Pennsylvania where they said basically we are trying to reinvent the wheel on this testing because the testing that has been used in Europe has worked fine for many years. And I certainly appreciate the position you are in with a lot of different interests that you represent. But when you said not now, we don't need Federal regulation not now, it does remind me once again of after Senator Mathias gave his 1981 speech in which he was advocating a uniform rule that was clear so everyone understood precisely what was allowed and not allowed, and afterwards all the States came running up to his office, and even there, and saying you don't need to act, we will take care of it. And now here we are 27 years later, and basically I don't think it has been taken care of. That is just my view and that is the view of a lot of people in the industry. And I am glad that Mr. Pitts had asked this question about how many horses do die on the track? That is a figure that we really don't know the answer to. Because they are not keeping track of it because it is an unpleasant part of this business. And we do know that the drugs has an impact on that because it impacts the horse.

And the previous panel, baseball, football, basketball, I think they made great strides, I think they are doing a pretty good job, but they talked about the necessity of random testing, the necessity of a hotline for tips. And particularly when you have a situation where an animal, a horse has no say-so in this whatsoever, and there is so much money involved in winning these races, we can understand people wanting to get an advantage.

But is there random testing in the industry like before a race while horses are at the stable getting ready to race? Is there random testing in any jurisdiction that you know of?

Mr. WALDROP. There is out of competition testing performed. There was extensive out of competition testing conducted this year prior to the Breeders Cup. In fact, I believe most all horses that were entered in the Breeders Cup were required to submit to or agree to submit to random testing. That is not the norm. It is expensive. Our horses travel a great deal. They are hard to locate. And we believe that post-race testing has proven to be—and for the most part has proven to be very accurate. Now, out of competition testing would help with EPO, and we acknowledge that. There is more work to be done.

Mr. WHITFIELD. But there is a problem with just the expense of testing. That is a problem. I mean the cost of doing it, I am sure.

Mr. WALDROP. Well, there is.

Mr. WHITFIELD. Now, let me ask you, do you all have a hotline for tips of people who may be taking advantage of the system that is in existence?

Mr. WALDROP. That is done on a State by State basis. I suspect there are States. I can't answer that for sure. I don't know. I can find out for sure. Yeah, I believe the USTA and the Thoroughbred Racing Protective Bureau, which is a security group that over-looks—

Mr. WHITFIELD. They have a hotline?

Mr. WALDROP. They do have a hotline, yes, sir.

Mr. WHITFIELD. Okay. I wasn't aware of that. Okay. Well, thank you very much for your testimony. Mr. Chairman, thank you for allowing me to ask those few.

Mr. RUSH. I have one additional question that I would like to ask the panel in its entirety. This is again, we will return to the "yes" or "no" format. Do you support saving samples of athletes for retroactive testing? And if you would just along with the "yes" or "no" just take a couple of seconds to explain or to hit upon the accuracy of such retroactive testing? Starting with Mr. Scherr.

Mr. SCHERR. Yes, we do support that. We believe that currently and in the future there will be accurate ability to store those samples and to have effective tests of those samples.

Mr. TYGART. We do. We currently have a policy in place developed in conjunction with our athletes. They support it wholeheartedly. It depends solely on what you are looking for when you retest it after the fact, or a retesting situation. If it is a steroid it is relatively stable and you can do it—as long as that sample is frozen, you can do it years down the road. Human growth hormone, you save it, freeze it, you can do it down the road. They are relatively stable. Some compounds aren't so stable. So it really depends on what you are going to reanalyze it for later. We have the policy. Big deterrent effect. And we also do it in practice, so it has a detection ability as well.

Mr. RUSH. Dr. Brand?

Mr. BRAND. The NCAA does save samples. We tend to follow the WADA approach as much as possible. We still have the same kinds of questions that were asked. We are looking forward for more research to know how long and how best to store those samples.

Mr. RUSH. Mr. Kanaby?

Mr. KANABY. Again, in the previous responses and our relationships with these groups here at this panel level table, I see no reason why not to support that.

Mr. RUSH. Mr. Waldrop?

Mr. WALDROP. We would absolutely support that. In fact, some States are already doing that in our business.

Mr. RUSH. This concludes our hearing for this day. I certainly again want to thank this panel, Panel II, for your patience, for your participation. You have really done this committee and the American people a great service by your being here and by your great and open testimony. We thank you so very much. And now the committee stands adjourned.

[Whereupon, at 2:25 p.m., the subcommittee was adjourned.]

[Material submitted for inclusion in the record follows:]

STATEMENT OF HON. JOHN D. DINGELL

I commend Chairman Rush and Ranking Member Whitfield for their leadership in bringing this important issue before us today. I also extend special thanks to our distinguished witnesses who will present testimony about what they have done and what remains to be done to address the problem of drug use in competitive sports.

In the 109th Congress, this Subcommittee held careful hearings and wrote the Drug Free Sports Act, legislation that was favorably reported by the Committee on Energy and Commerce. We deferred further action on that bill in order to give the professional sports leagues and players associations an opportunity to act decisively. We look forward to their testimony this morning on the progress that they have achieved. The professional league's anti-doping programs have significantly improved in recent years, but the testimony of the United States Anti-Doping Agency

states, “they still fail to fully implement all the basic elements of the most effective programs.” What remains to be done, and what is the most effective means of achieving it?

The Subcommittee also will hear today from the organizations representing college and high school sports. What special challenges do they face, and how can we help them establish and maintain effective drug-testing and education programs?

Using steroids, human growth hormone, and other performance enhancing drugs to gain a competitive edge is cheating, plain and simple. It undermines the integrity of the game, unfairly disadvantages honest athletes who refuse to use them, and calls into question outcomes and records. The use of these substances carries with it potentially serious negative side effects for the human body. Adolescents place themselves at risk of more serious physical harm than adults. Along with the health risks, there is the risk of going to jail. Last year, disgraced Olympian Marion Jones pleaded guilty to three counts of lying to Federal agents about her steroid use, and she was sentenced to prison. Home run king Barry Bonds was indicted on charges of lying to a Federal grand jury about his own alleged use of illegal steroids. Sometimes the outcome is incomprehensively tragic, such as the tragic event last summer when World Wrestling Entertainment (WWE) wrestler Chris Benoit killed his wife and 7 year old son, and then committed suicide. Shortly thereafter, WWE suspended 10 WWE performers tied to an alleged steroid ring. This has to stop.

I look forward to working with all parties to see to it that this country has the most effective testing and educational programs possible. While all of us recognize that someone is always going to try to beat the system, we have an obligation to continually reassess what we have, and to provide the necessary tools to prevent as many as possible from risking their health and undermining the integrity of athletic competition.

